

WSR 11-20-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-250—Filed September 21, 2011, 4:57 p.m., effective September 21, 2011, 4:57 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho available in these areas. Enough summer chum have reached the spawning areas to allow one day of gill net fishing for coho for treaty and nontreaty fishers as permitted in the Summer Chum Salmon Conservation Initiative. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 21, 2011.

Philip Anderson
 Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-47-411, effective immediately it is unlawful to take or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Management Catch Reporting Areas 12A, except as provided:

(1) Area 12A - Open for skiff gill nets only on Friday, September 23, 2011, from 7:00 a.m. to 7:00 p.m. Closed south of line from Point Whitney to Tabook Point.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 23, 2011:

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

WSR 11-20-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-249—Filed September 21, 2011, 4:57 p.m., effective September 21, 2011, 4:57 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 220-33-01000D; 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: Rescinds the mainstem commercial fishing period previously scheduled for the evening of September 22, 2011. Action is necessary to keep non-Indian fisheries within the allowable ESA impact level for upriver bright fall chinook. No changes were made to the SAFE fisheries. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 28, 2011, and September 21, 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: September 21, 2011.

Philip Anderson
Director

NEW SECTION

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

1. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 6 PM to 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big

Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

2. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 4 PM to 10 AM.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

3. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 4 PM to 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of

tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000D Columbia River season
below Bonneville. (11-241)

WSR 11-20-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-251—Filed September 21, 2011, 4:57 p.m., effective September 26, 2011, 6:00 a.m.]

Effective Date of Rule: September 26, 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 220-32-05100I; 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); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the sixth weekly commercial gillnet fishing period for the 2011 fall season. Reduces the Spring Creek sanctuary since the hatchery broodstock needs are expected to be met. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Based on in-season forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 Management Agreement. Rule is consistent with action of the Columbia River compact on May 10 and September 21, 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 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 21, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100J 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 (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 September 26 through 6:00 PM September 29, 2011.

b. Gear: Gill nets only. Minimum mesh size is 8 inches.

c. Allowable sales: Salmon, steelhead, shad, yellow perch, bass, walleye, carp and catfish may be sold or retained for subsistence. 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.

d. Standard sanctuaries in effect. Spring Creek sanctuary is a 150-foot diameter around the hatchery ladder.

2. 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 sales: Salmon, steelhead, shad, yellow perch, bass, carp and catfish. 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 only.

d. Standard sanctuaries in effect.

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, yellow perch, bass, carp and catfish.

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.

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.

e. Season: Immediately until further notice.

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

g. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; 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. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 26, 2011:

WAC 220-32-05100I	Columbia River salmon seasons above Bonneville Dam. (11-245)
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**WSR 11-20-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-252—Filed September 22, 2011, 1:45 p.m., effective September 22, 2011, 1:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100N and 220-52-07100P; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber district listed. Limiting daily landing amounts for harvest in Sea Cucumber District 1 is necessary to ensure that the area harvest quota share amount is not exceeded. It is anticipated that following this harvest opening, the harvest quota share available in Sea Cucumber District 1 will be exhausted, and that the commercial non-Indian sea cucumber fishery will be closed for the 2011-2012 harvest management period. 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: September 22, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 on Monday, September 26, 2011, only. The maximum daily landing of sea cucumbers allowed in Sea Cucumber District 1 is 400 pounds per valid designated sea cucumber harvest license.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100N Sea cucumbers. (11-182)

The following section of the Washington Administrative Code is repealed effective 7:29 p.m. September 26, 2011:

WAC 220-52-07100P Sea cucumbers.

WSR 11-20-016 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-253—Filed September 22, 2011, 1:48 p.m., effective October 2, 2011]

Effective Date of Rule: October 2, 2011.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. By harvest management agreement, the legal size limits for red sea urchins have changed for the 2011-2012 harvest management period. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 when those vessels have red sea urchin on-board discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. Prohibiting transport of urchins from Districts 1 and 2 to other districts will prevent spoiling of product, promote accurate catch accounting, and provide for an orderly fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 22, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-52-07300W Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective October 2, 2011 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open only on Sunday through Wednesday of each week. Sea Urchin Districts 3, 4, 6, and 7 are open seven days-per-week.

(2) Red sea urchins: Sea Urchin Districts 1, 2, and 4 are open seven days-per-week. In Sea Urchin Districts 1, 2, and 4, it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective October 2, 2011:

WAC 220-52-07300V Sea urchins. (11-211)

WSR 11-20-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-254—Filed September 22, 2011, 1:50 p.m., effective October 1, 2011, 12:01 a.m.]

Effective Date of Rule: October 1, 2011, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500J.

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: Federal regulations allow the Pacific halibut fishery to remain open in this area until the quota is taken, or September 30, whichever occurs first. There is sufficient quota to allow the recreational halibut fishery to remain open through September 30. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 22, 2011.

Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 1, 2011:

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

WSR 11-20-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-255—Filed September 22, 2011, 3:40 p.m., effective September 28, 2011, 7:00 a.m.]

Effective Date of Rule: September 28, 2011, 7:00 a.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surplus of coho available in these areas. Enough summer chum have reached the spawning areas to allow one day of gill net fishing for coho for treaty and nontreaty fishers as permitted in the summer chum salmon conservation initiative. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 22, 2011.

Philip Anderson
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-47-411, effective immediately it is unlawful to take, fish for or possess salmon taken for commercial purposes with gill net gear in those waters of Puget Sound Management Catch Reporting Areas 12A, except as provided:

(1) Area 12A - Open for skiff gill nets only on Wednesday, September 28, 2011, from 7:00 a.m. to 7:00 p.m. Closed south of line from Point Whitney to Tabook Point.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. September 28, 2011:

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

WSR 11-20-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-259—Filed September 27, 2011, 3:56 p.m., effective September 28, 2011]

Effective Date of Rule: September 28, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900X; 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: This emergency regulation will allow anglers to retain incidentally caught sockeye and/or salmon during the steelhead fishery, allowing additional 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: September 27, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective September 28 through October 15, 2011, it is permissible to fish for salmon in waters of the Columbia River from Wells Dam to the 173 Bridge in Brewster. Daily limit six salmon, minimum size 12 inches in length. Up to three adult Chinook may be retained, of which no more than one may be a wild adult. Release all coho. Selective gear rules and night closure in effect. However, bait is allowed.

REPEALER

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

WAC 232-28-61900X Exceptions to statewide rules—Columbia River.

WSR 11-20-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-258—Filed September 27, 2011, 3:56 p.m., effective September 28, 2011]

Effective Date of Rule: September 28, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Hatchery-origin steelhead in excess of desired escapement goals are forecast to return to the upper Columbia River. The fishery will reduce the number of excess hatchery-origin steelhead and consequently increase the proportion of natural-origin steelhead on the spawning grounds. 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: September 27, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Columbia, Entiat, Methow, Okanogan, Similkameen and Wenatchee rivers. Notwithstanding the provisions of WAC 232-28-619, in the following waters special daily limit of two hatchery steelhead, 20-inch minimum size. Release all steelhead with one or more round 1/4-inch diameter holes punched in the caudal (tail) fin. Mandatory retention in effect.

(1) Mainstem Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam: Open September 28, 2011, until further notice. Night closure and selective gear rules apply, except bait is allowed.

(2) Entiat River upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River, approximately 6 miles to 800 feet downstream of the Entiat National Fish Hatchery outfall: Open September 28, 2011, until further notice. Night closure and selective gear rules apply.

(3) Methow River from the Hwy 97 Bridge in Pateros upstream to the confluence with the Chewuch River in Winthrop, WA: Open September 28, 2011, until further notice. Night closure and selective gear rules apply. Fishing from a floating device is prohibited from the second powerline crossing (1 mile upstream from the mouth) to the first Hwy 153 bridge (4 miles upstream from the mouth).

(4) Okanogan River from the mouth upstream to Hwy 97 Bridge in Oroville: Open September 28, 2011, until further notice. Night closure and selective gear rules apply.

(5) Similkameen River from its mouth to 400 feet below Enloe Dam: Open November 1, 2011 until further notice. Night closure and selective gear rules apply.

(6) Wenatchee River from the mouth to the Wenatchee river at the Icicle Road Bridge, including the Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam: Open September 28, 2011, until further notice. Night closure and selective gear rules apply.

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

WSR 11-20-042

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed September 28, 2011, 12:15 p.m., effective October 1, 2011]

Effective Date of Rule: October 1, 2011.

Purpose: Pursuant to 2ESHB 1087, effective October 1, 2011, the health care authority (HCA) is directed to restrict coverage of emergency room visits to those involving emergency services.

Citation of Existing Rules Affected by this Order: Amending WAC 182-550-1200.

Statutory Authority for Adoption: Section 213, chapter 50, Laws of 2011 (2ESHB 1087), RCW 74.08.090, 43.88.-290.

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 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.

Reasons for this Finding: On June 15, 2011, the Washington state legislature filed 2ESHB 1087 which directs HCA to collaborate closely with the Washington state hospital and medical associations in identifying the diagnostic codes and retroactive review procedures that will be used to determine whether an emergency room visit is a nonemergency condition to assure that conditions that require emergency treatment continue to be covered.

Delaying the adoption of this rule could jeopardize the state's ability to continue to provide healthcare coverage for clients with conditions that require emergency treatment.

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 1, Repealed 0.

Date Adopted: September 28, 2011.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-1200 Restrictions on hospital coverage. A hospital covered service provided to a client eligible under a medical assistance program that is paid by the ~~((department's))~~ agency's fee-for-service~~((s))~~ payment system must be within the scope of the client's medical assistance program. Coverage restriction includes, but is not limited to, the following:

(1) Clients enrolled with the ~~((department's))~~ agency's managed care organization (MCO) plans are subject to the respective plan's policies and procedures for coverage of hospital services;

(2) Clients covered by primary care case management are subject to the clients' primary care physicians' approval for hospital services;

(3) For emergency care exemptions for clients described in subsections (1) and (2) of this section, see WAC ~~((388-538-100))~~ 182-538-100.

(4) Coverage of emergency room visits that do not meet the definition of emergency services according to WAC 182-550-1050.

(a) The agency covers a maximum of three emergency room visits that do not meet the definition of emergency services per client, per state fiscal year (for 2012 only, the agency defines the state fiscal year as October 1, 2011, through June 30, 2012) with the following exceptions:

(i) A client who is either:

(A) In foster care; or

(B) On the alien emergency medical (AEM) program (see WAC 388-438-0120).

(ii) A client who lives in one of the following settings:

(A) A department of social and health services-licensed residential setting/home;

(B) A skilled nursing facility;

(C) An institution for the mentally diseased; or

(D) A chemical dependency treatment facility.

(iii) The visit results in either:

(A) A surgery that requires the use of the hospital's operating room; or

(B) An extended, payable clinical observation stay.

(iv) A primary diagnosis that is:

(A) Psychiatric; or

(B) Drug and alcohol detoxification.

(v) A visit:

(A) Where signs and/or symptoms of abuse are present and documented;

(B) For a client that requires medical clearance by a designated mental health professional required for placement in a psychiatric facility;

(C) That results in an inpatient admission;

(D) That results in a transfer to another hospital;

(E) For a client that is brought to the hospital via:

(I) Ambulance;

(II) Emergency medical transport; or

(III) Police transport for a client that has not been booked and retained in jail.

(F) For a client who is transferred from another hospital, urgent care center, or ambulatory surgical center; or

(G) That meets the agency's published expedited authorization criteria for emergency visits.

(b) An expedited authorization number is required to indicate to the agency the visit is excluded because the conditions in (a)(ii) and (v)(B), (E), and (F) of this subsection are met.

(c) Emergency room visits in excess of three visits per state fiscal year as described in (a) of this subsection are non-covered.

(d) Providers of noncovered emergency room visits and related services must comply with WAC 182-502-0160, Billing a client, when billing the client. All services associated with the noncovered visit are considered part of the visit. This includes, but is not limited to: Hospital, professional, diagnostic, and laboratory fees for services that may occur either within or outside of the hospital system.

(e) The agency will retroactively recoup payments from all of the billing providers. This includes, but is not limited to: Hospital, professional, diagnostic, and laboratory fees for services that may occur either within or outside of the hospital system.

(5) Coverage for psychiatric indigent inpatient (PII) clients is limited to voluntary inpatient psychiatric hospital services, subject to the conditions and limitations of WAC 388-865-0217 and this chapter:

(a) Out-of-state healthcare is not covered for clients under the PII program; and

(b) Bordering city hospitals and critical border hospitals are not considered ~~((instate))~~ in-state hospitals for PII program claims.

~~((5))~~ (6) Healthcare services provided by a hospital located out-of-state are:

(a) Not covered for clients eligible under the medical care services (MCS) program. However, clients eligible for MCS are covered for that program's scope of care in bordering city and critical border hospitals.

(b) Covered for:

(i) Emergency care for eligible medicaid and state children's health insurance program (SCHIP) clients without prior authorization, based on the medical necessity and utilization review standards and limits established by the ~~((department))~~ agency.

(ii) Nonemergency out-of-state care for medicaid and SCHIP clients when prior authorized by the ~~((department))~~ agency or agency's designee based on the medical necessity and utilization review standards and limits.

(iii) Hospitals in bordering cities and critical border hospitals, based on the same client eligibility criteria and authorization policies as for ~~((instate))~~ in-state hospitals. See WAC ~~((388-501-0175))~~ 182-501-0175 for a list of bordering cities.

(c) Covered for out-of-state voluntary inpatient psychiatric hospital services for eligible medicaid and SCHIP clients based on authorization by a ~~((mental health))~~ division ~~((MHD))~~ of behavioral health and recovery (DBHR) designee.

~~((6))~~ (7) See WAC ~~((388-550-1100))~~ 182-550-1100 for hospital services for chemical-using pregnant (CUP) women.

~~((7))~~ (8) All psychiatric inpatient hospital admissions, length of stay extensions, and transfers must be prior autho-

ized by a ((MHD)) DBHR designee. See WAC ((388-550-2600)) 182-550-2600.

((8)) (9) For clients eligible for both medicare and medicaid (dual eligibles), the ((department)) agency pays deductibles and coinsurance, unless the client has exhausted his or her medicare Part A benefits. If medicare benefits are exhausted, the department pays for hospitalization for such clients subject to ((department)) agency rules. See also chapter ((388-502)) 182-502 WAC.

((9)) (10) The ((department)) agency does not pay for covered inpatient hospital services for a medical assistance client:

(a) Who is discharged from a hospital by a physician because the client no longer meets medical necessity for acute inpatient level of care; and

(b) Who chooses to stay in the hospital beyond the period of medical necessity.

((10)) (11) If the hospital's utilization review committee determines the client's stay is beyond the period of medical necessity, as described in subsection ((9)) (10) of this section, the hospital must:

(a) Inform the client in a written notice that the ((department)) agency is not responsible for payment (42 CFR 456);

(b) Comply with the requirements in WAC ((388-502-0160)) 182-502-0160 in order to bill the client for the service(s); and

(c) Send a copy of the written notice in (a) of this subsection to the ((department)) agency or agency designee.

((11)) (12) Other coverage restrictions, as determined by the ((department)) agency.

WSR 11-20-044

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-257—Filed September 28, 2011, 2:20 p.m., effective September 28, 2011, 8:00 p.m.]

Effective Date of Rule: September 28, 2011, 8:00 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 220-33-01000E; 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 com-

mission 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: Continues the late fall mainstem commercial season for non-Indian fisheries. In-season run size forecasts have been upgraded for upriver bright chinook. Harvestable fish remain available to commercial fisheries. Impacts to ESA-listed salmonid stocks are expected to remain within the limits allocated to non-Indian fisheries. The seasons are consistent with the 2008-2017 interim management agreement. The regulation is consistent with compact action of July 28, 2011, and September 27, 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: September 28, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

1. Mainstem Columbia River

a. SEASON: 8 PM Wednesday, September 28, to 6 AM Thursday, September 29, 2011.

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E.

c. GEAR: Drift gillnets only. 8-inch minimum mesh size.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. SANCTUARIES: Grays, Elokomin-B, Cowlitz, Kalama-B, Lewis-B, Washougal and Sandy Rivers as applicable.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of seven (7) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday).

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open hours are 6 PM to 8 AM.

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

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 28, 2011. Open 4 PM to 10 AM.

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

c. GEAR: Gillnet. 6-inch maximum mesh.

Tongue Point fishing area: Net length 250 fathoms maximum. Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard gillnets legal for the South Channel fishing area.

South Channel area: Net length 100 fathoms maximum. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 28, 2011. 4 PM to 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gill net. Monofilament gear is allowed. 6-inch maximum mesh. Net length 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

d. ALLOWABLE SALES: Salmon.

5. Quick Reporting: 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of

each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000E Columbia River season
below Bonneville. (11-249)

**WSR 11-20-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-260—Filed September 28, 2011, 2:54 p.m., effective September 28, 2011, 2:54 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100Q; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Limiting daily landing amounts for harvest in Sea Cucumber Districts 1 and 2 is necessary to ensure that the area harvest quota share amount is not exceeded. It is anticipated that following this harvest opening, the harvest quota share available in Sea Cucumber Districts 1 and 2 will be exhausted and that the commercial non-Indian sea cucumber fishery will be closed for the 2011-2012 harvest management period. There is insufficient time to promulgate permanent rules.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

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

Date Adopted: September 28, 2011.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 on Friday, September 30, 2011, only. The maximum daily landing of sea cucumbers allowed in Sea Cucumber District 1 is 625 pounds per valid designated sea cucumber harvest license.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on Friday, September 30, 2011, only.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:21 p.m. September 30, 2011:

WAC 220-52-07100Q Sea cucumbers.

**WSR 11-20-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-256—Filed September 29, 2011, 1:29 p.m., effective October 1, 2011, 8:00 a.m.]

Effective Date of Rule: October 1, 2011, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, 220-52-046, and 220-69-240.

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 provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives. 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 3, 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: September 29, 2011.

Philip Anderson
Director

NEW SECTION

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

(1) Dungeness crab pots may be deployed between 8:00 a.m. October 1, 2011, and 7:59 a.m. October 3, 2011, in Puget Sound waters from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided prior notice has been given as indicated below.

(2) The licensed owner must leave a telephone message at the Mill Creek annex office, (425) 379-2315, or by email to crabreport@dfw.wa.gov, with the following information:

- a) Name and license number of licensed owner.
- b) Name of designated primary operator if different from licensed owner.
- c) Name of alternate operator if used to deploy pots from a non-designated vessel.
- d) Buoy brand number and number of pots to be deployed from a non-designated vessel.
- e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

(3) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(4) Effective 8:00 a.m. October 1, 2011, until 7:00 p.m. October 15, 2011, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1, 2 East, 2 West, and sub-area 3-1. These regions include Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A-East, 26A-West, 25B, 25D, 23A and 23B.

(5) Effective 8:00 a.m. October 1, 2011, until 7:00 p.m. October 15, 2011, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management sub-area 3-2, which includes Marine Fish-Shellfish Management and Catch Reporting Areas 25A, 25E, and 23D.

(6) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

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.

NEW SECTION

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

(1) Effective 8:00 a.m. October 1, 2011, until 7:00 p.m. October 15, 2011, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

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

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

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

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

(e) Port Gardner: That portion of Marine Fish-Shellfish Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo, projected to the green #3 buoy at the mouth of the Snohomish River, and west of a line projected from that #3 buoy southward to the oil boom pier on the shoreline.

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

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

(2) Effective 8:00 a.m. October 1, 2011, until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longi-

tude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

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

(3) Effective 7:00 p.m. October 15, 2011, until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Regions 1, 2 East, 2 West, and sub-area 3-1. These regions include Marine Fish-Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 24A, 24B, 24C, 24D, 26A-East, 26A-West, 25B, 25D, 23A and 23B.

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.

NEW SECTION

WAC 220-69-24000X Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective October 1, 2011, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made by fax to (425) 338-1066, or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, and the total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area.

WSR 11-20-051

EMERGENCY RULES

DEPARTMENT OF PERSONNEL

[Filed September 29, 2011, 3:26 p.m., effective October 1, 2011]

Effective Date of Rule: October 1, 2011.

Purpose: Part IV of ESSB 5931 (consolidation bill) transfers powers and duties from the department of personnel (DOP) to the office of financial management (OFM) or to the department of enterprise services (DES). Some of the proposed modifications below reflect the necessary changes to transfer these powers and duties.

We searched Title 357 WAC for all references to "department," "department of personnel," and "director." We have determined which references to "department" and "department of personnel" should be changed to OFM, director's office (meaning director's office within OFM), or to DES, or if the rule should be moved under the jurisdiction of

one of these agencies. We are changing the definition of "director" to reflect the new definition found in RCW 41.06.020 therefore it is not necessary to change all references to "director" found in Title 357 WAC. We are also cleaning up references to RCWs that have been repealed or decodified by ESSB 5931.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-01-100, chapter 357-07 WAC, Public records, chapter 357-10 WAC, Classification plan, WAC 357-16-025, 357-19-510, 357-19-515, 357-28-125, 357-34-025 and 357-34-035; and amending WAC 357-01-015, 357-01-110, 357-04-065, 357-04-070, 357-13-025, 357-13-075, 357-13-080, 357-13-085, 357-13-090, 357-16-005, 357-16-010, 357-16-015, 357-16-020, 357-16-030, 357-16-155, 357-16-160, 357-16-175, 357-19-525, 357-22-025, 357-25-015, 357-25-020, 357-25-025, 357-25-030, 357-28-029, 357-28-130, 357-31-230, 357-31-645, 357-34-090, 357-34-100, 357-34-105, 357-34-110, 357-34-115, 357-34-120, 357-46-100, 357-46-135, 357-46-145, 357-49-010, 357-52-030, 357-58-015, 357-58-032, 357-58-050, 357-58-055, 357-58-065, 357-58-075, 357-58-080, 357-58-085, 357-58-105, 357-58-130, 357-58-135, 357-58-140, 357-58-395, 357-58-430, 357-58-435, 357-58-515, 357-58-546, and 357-58-565.

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 5931 states that the director of the DOP shall adopt rules as necessary to implement the changes to accommodate the consolidation efforts.

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 1, Amended 56, Repealed 9.

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 1, Amended 56, Repealed 9.

Date Adopted: September 29, 2011.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-015 Affirmative action plan. Results-oriented programs to which employers commit their good faith efforts to attain and maintain equal employment opportunity. Guidelines for development of affirmative action plans are established by the ((department)) director's office and are consistent with requirements set forth by federal

Executive Order 11246 and Affirmative Action Guidelines issued by the U.S. Departments of Labor and Justice.

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-110 Director. ~~((Director of the department of personnel.))~~ State human resources director within the office of financial management.

AMENDATORY SECTION (Amending WSR 04-15-017, filed 7/8/04, effective 7/1/05)

WAC 357-04-065 What are the duties of the board? The board is composed of three members appointed by the governor and confirmed by the senate as provided in RCW 41.06.110.

(1) The board must annually elect a chair and vice chair from among its members to serve one year.

(2) The board must conduct business in accordance with RCW 41.06.120.

(3) The board is responsible for:

(a) ~~((Adopting rules that establish goals for the classification plan, define))~~ Defining criteria for exemption from the civil service rules ~~((, and establish a training requirement for employees appointed to a supervisory or management position))~~ as provided in RCW 41.06.070(1).

(b) Hearing and determining employee appeals in accordance with chapter 357-52 WAC.

~~((c) Prioritizing and adopting class studies and salary adjustments under the provisions of RCW 41.06.152(2).))~~

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

WAC 357-04-070 What are the powers and duties of the director? (1) The director ~~((of personnel))~~ is appointed by the governor under the provisions of ~~((RCW 41.06.130))~~ chapter 43, Laws of 2011.

(2) The director ~~((directs and supervises all the department of personnel's administrative and technical activities in accordance with the provisions of chapter 41.06 RCW and the civil service rules))~~ may delegate to any general government agency the authority to perform administrative and technical personnel activities if the general government agency requests such authority and the director is satisfied that the general government agency has the personnel management capabilities to effectively delegate activities.

(3) The director shall prescribe standards and guidelines for the performance of delegated activities.

(4) The director is responsible for:

(a) Adopting rules consistent with the purposes and provisions of the state civil service law and the best standards of personnel administration.

(b) Auditing and reviewing the personnel administration and management at each agency, institution of higher education, and related higher education board periodically and at other such times as may be necessary.

(c) Adopting and revising as necessary a comprehensive classification plan for all positions in the classified service. In adopting the revisions, the director must comply with RCW

41.06.152, ~~((41.06.150(4)))~~ chapter 43, Laws of 2011, and chapter 43.88 RCW.

~~((d) Adopting and revising as necessary a state salary schedule in accordance with RCW 41.06.133(10).))~~

NEW SECTION

WAC 357-04-130 What rules ensure that the director's office complies with the provisions of the State Public Records Act? Chapter 82-48 WAC are the rules which ensure the office of financial management complies with the State Public Records Act. These rules apply to the director's office.

REPEALER

Chapter 357-07	Public records
Chapter 357-10	Classification plan
WAC 357-01-100	Department
WAC 357-16-025	How must employers and the department inform prospective applicants of recruitments?
WAC 357-19-510	Who is responsible for administering the return-to-work initiative program?
WAC 357-19-515	Who is eligible to participate in the return-to-work initiative program?
WAC 357-28-125	How is an employee's base salary affected when the employee's position is allocated to a new class as a result of the director taking action to implement the new classification plan as required by WAC 357-10-010(1)?
WAC 357-34-025	What are the director's training and development responsibilities?
WAC 357-34-035	Can an employee get a copy of the employer's training and development plan?

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan? (1) The following ~~((three))~~ criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) ~~((Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;))~~

~~(b))~~) The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

~~((e))~~) (b) The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

- (i) Documented recruitment or retention difficulties;
- (ii) Salary compression or inversion;
- (iii) Classification plan maintenance;
- (iv) Higher level duties and responsibilities; or
- (v) Inequities.

(2) The provisions of subsection (1)~~((b) and (1)(e))~~ of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-075 Must the notice of reallocation inform the employee of the right to request a director's review of the reallocation? Notice of reallocation must include information regarding the employee's right to request a director's review of the reallocation per WAC 357-13-080. ~~((This requirement does not apply when the employee is being reallocated to a class with the same salary range maximum based upon the director taking action to implement a new classification plan under the provisions of RCW 41.06.136.))~~

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-080 Can an employee request a director's review of a position review or reallocation of the employee's position? ~~((H))~~) An employee may request a director's review of the results of a position review or reallocation of the employee's position, per WAC 357-49-010. The employee must request the director's review within thirty cal-

endar days of being provided the results of a position review or the notice of reallocation.

~~((2) When an employee's position is reallocated to a class with the same salary range maximum based upon the director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to request a director's review. The employee may request a position review in accordance with the provisions of WAC 357-13-065. Following the position review, the employee may request a director's review of the results of the position review per WAC 357-49-010.))~~

AMENDATORY SECTION (Amending WSR 10-23-042, filed 11/10/10, effective 12/13/10)

WAC 357-13-085 How is the effective date of a reallocation determined? The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's ~~((implementation or))~~ revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(4) The effective date of a reallocation to a class with a lower salary range maximum resulting from a director's review determination to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the director's determination unless the review determination is appealed to the ~~((personnel resources))~~ board. The effective date of a reallocation to a class with a lower salary range maximum resulting from a board order to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the board's order.

AMENDATORY SECTION (Amending WSR 06-23-090, filed 11/14/06, effective 12/18/06)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i>	<i>If the employee meets the competencies and other position requirements:</i>	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
	<p>⇒ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>⇒ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p>⇒ The employee remains in the position and retains existing appointment status.</p> <p>⇒ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p>⇒ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>⇒ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
	Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed the top step of the range as provided in WAC 357-28-115.	⇒ The employer's layoff procedure applies.	
The director (implementing a new classification plan under provisions of RCW 41.06.136 or) revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC (357-28-125 and) 357-28-130 for determining the employee's salary.		

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-005 What is the ~~((department's))~~ department of enterprise services' role in recruiting applicants and assessing candidates for positions in the classified service? On the behalf of employers, the department of enterprise services may recruit applicants, assess candidates, create candidate pools, and assist with the certification of candidates for positions in the classified service.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-010 What authority do general government employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration? Under the authority of the director, general government employers may carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. At anytime, the director may designate the department of enterprise services to carry out any of these activities on the employer's behalf.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-015 What authority do higher education employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration? Higher education employers are authorized under RCW 41.06.133 and 41.06.150 to carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. (~~Upon the request of a higher education employer, the director may designate the department to act on the employer's behalf.~~)

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-020 Who is responsible for determining what recruitment methods are appropriate to meet the hiring needs of the employer? (~~The department and~~) Employers may use the recruiting methods that they determine to be most appropriate for their hiring needs when soliciting job seekers or establishing pools of eligible applicants.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

WAC 357-16-030 For affirmative action purposes, may ~~((the department or))~~ employers add job seekers who are affected group members to applicant pools? For affirmative action purposes, (~~the department or~~) employers may at any time recruit and screen persons with disabilities, Vietnam era veterans, disabled veterans, and persons age (~~(40))~~ forty and over for placement in eligible applicant pools in those areas where goals exist.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in a class series? An employer or the (~~department~~) director's office may disqualify an individual by removing or directing the removal of the individual's name from an applicant and/or candidate pool for a class or all classes in a class series at anytime for good and sufficient reason.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-16-160 Must an applicant or candidate who has been removed for good and sufficient reason per WAC 357-16-155 be notified of the removal? When an applicant or candidate is removed from an applicant or candidate pool for good and sufficient reason per WAC 357-16-155, the employer or the (~~department~~) director's office must

notify the applicant or candidate at the time of the removal. The notice must be in writing and specify the reason for the removal. The notice must explain the right to request a review of the removal under the provisions of WAC 357-16-170, 357-16-175 and 357-16-180. For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-01-187, filed 12/21/04, effective 7/1/05)

WAC 357-16-175 To whom and by when must an applicant or candidate request a review of the results of an examination or removal from an applicant or candidate pool? (1) If the employer is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made to the employer. If the department of enterprise services is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made ~~((to the director))~~ under the provisions of WAC 357-49-010.

(2) If the employer is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review under the provisions of WAC 357-16-170 must be made to the employer. If the director's office is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review will be under the provisions of WAC 357-49-010.

(3) The request for a review must be received at the employer's office or the director's office within twenty calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

WAC 357-19-525 What are the employer's responsibilities for return-to-work? Each employer must:

(1) Adopt a written return-to-work policy ~~((and submit a copy to the department))~~.

(2) Designate an employer representative to be responsible for coordinating the employer's return-to-work program.

(3) Provide information on the employer's return-to-work policy to employees.

(4) Provide training of appropriate supervisors on implementation of the employer return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; general knowledge of available return-to-work options ~~((;))~~ and resources available ~~((; and awareness that the return-to-work program expects cooperation and participation by all employers))~~.

(5) Coordinate participation of applicable employee assistance programs, as appropriate.

(6) If possible, provide time-limited opportunities to employees who are in the return-to-work program.

AMENDATORY SECTION (Amending WSR 05-01-198, filed 12/21/04, effective 7/1/05)

WAC 357-22-025 What information must be sent from one employer to another when an employee changes employers within state government? When an employee accepts an appointment with a different employer, the most recent former employer must provide employee information to the new employer in a transmittal package ~~((developed))~~ specified by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-015 Who administers the statewide affirmative action program? The ~~((department))~~ director's office is responsible for administering the statewide affirmative action program ~~((The department provides))~~ and providing technical assistance to employers in the development and implementation of affirmative action plans, updates, and programs.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-020 What are the administrative responsibilities of the ~~((department))~~ director's office? In accordance with state and federal laws, the ~~((department))~~ director's office:

(1) Establishes guidelines to assist in developing and implementing affirmative action plans;

(2) Provides the essential data for determining availability of affected groups;

(3) Reviews and approves the technical aspect of affirmative action plans and updates;

(4) ~~((Assists in recruiting affected group members, including targeted recruitment when the representation of affected group members is less than its availability;~~

~~((5)))~~ Reviews the progress of employers in meeting goals and addressing problems identified in affirmative action plans and programs; and

~~((6)))~~ (5) Reviews statewide employment trends for general government such as appointment, promotion, transfer, terminations, and formal disciplinary actions for adverse impact, as necessary.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC? (1) All employers must maintain:

(a) An affirmative action and equal employment opportunity policy statement; and

(b) Policy statements on sexual harassment and reasonable accommodation.

(2) The employer's affirmative action and equal employment opportunity policy statement must be reviewed and approved by the head of the agency, institution, or related higher education board each year. The policy statements on

sexual harassment and reasonable accommodation must be updated as needed.

~~((3) Agencies as defined in RCW 41.06.020 must submit their sexual harassment policy as follows:~~

~~(a) Agencies with fifty or more full-time equivalent employees must submit their policy to the department with the employer's affirmative action plan and affirmative action plan update.~~

~~(b) Agencies with twenty-five to forty-nine full-time equivalent employees must submit their policy to the department with their small agency workforce profile.~~

~~(c) Agencies with fewer than twenty-five full-time equivalent employees must submit their policy to the department at least every two years.)~~

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

WAC 357-25-030 What are the affirmative action reporting requirements that employers must comply with for purposes of chapter 357-25 WAC? Employers must report affirmative action information to the ~~((department))~~ director's office as follows:

(1) If an employer has federal affirmative action reporting obligations, the employer must submit an affirmative action plan on a two-year cycle as set by the ~~((department))~~ director's office.

(2) If the employer does not have federal affirmative action reporting obligations, the reporting requirements depend upon the employer's size.

(a) Employers with 25 - 49 full-time equivalent (FTE) employees must submit a small agency/institution workforce profile annually.

(b) Employers with 50 or more FTE employees must submit an affirmative action plan on a four-year cycle as set by the ~~((department))~~ director's office, with an update to the affirmative action plan two years into the cycle.

AMENDATORY SECTION (Amending WSR 07-03-050, filed 1/12/07, effective 2/15/07)

WAC 357-28-029 When making a special pay request for higher education, what information must the requesting party provide ~~((department of personnel staff))~~? It is the responsibility of the requesting party to provide ~~((department of personnel))~~ the director's staff with information necessary to make a recommendation to the director. Information to be provided must include:

(1) Data supporting the pay practice in the locality of the institution for which the request is being made; ~~((and))~~

(2) Rationale supporting the request; and

(3) When applicable, data showing recruitment/retention difficulty.

AMENDATORY SECTION (Amending WSR 07-11-100, filed 5/16/07, effective 7/1/07)

WAC 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class ~~((after the initial implementation of the classification plan))~~? When reallocation is necessary because the director

creates, abolishes, or revises a class ~~((after the initial implementation of the classification plan))~~, an employee's base salary is determined as follows:

(1) An employee occupying a position reallocated to a class with the same or lower salary range must be paid an amount equal to his/her previous base salary.

(2) An employee occupying a position reallocated to a class with a higher salary range must have his/her base salary adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

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

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider ~~((the work requirements of the department))~~ their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time 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, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time 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.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time 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.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) 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 compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 07-17-123, filed 8/20/07, effective 10/1/07)

WAC 357-31-645 Who will administer the uniformed service shared leave pool? The military department, in consultation with the ~~((department of personnel and the))~~ office of financial management, shall administer the uniformed service shared leave pool.

AMENDATORY SECTION (Amending WSR 06-19-062, filed 9/19/06, effective 10/20/06)

WAC 357-34-090 Who provides the required supervisory or managerial training? The department of enterprise services provides training activities to fulfill the requirement in WAC 357-34-055 and/or consultative services, as requested, to assist employers in development of their own programs. Employer-developed training must satisfy the requirements of WAC 357-34-060 and 357-34-065.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-115 What must be included in the required sexual harassment awareness and prevention training? The requirements of the sexual harassment awareness and prevention training will be published by the ~~((department. All training must satisfy the requirements by July 1, 2008))~~ director's office.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-120 Who provides the required sexual harassment awareness and prevention training? Either the department of enterprise services or the agency may provide the sexual harassment awareness and prevention training.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training? General government employees ~~((of agencies defined in RCW 41.06.020))~~ are required to complete sexual harassment awareness and prevention training at least every five years. For new employees sexual harassment awareness and prevention training should be completed within the first six months of employment, or earlier if required by the employer's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment awareness and prevention training? Effective July 1, 2008, in addition to the training described in WAC 357-34-100, all managers and supervisors of general government agencies ~~((defined in RCW~~

~~41.06.020))~~ are required to complete training on managers' roles and responsibilities regarding sexual harassment every three years. For new supervisors and managers, training on roles and responsibilities should be completed within the first six months of becoming a manager or supervisor.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

WAC 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee? ~~((Agencies as defined in RCW 41.06.020))~~ General government employers may waive the sexual harassment awareness and prevention training or the managers' roles and responsibilities training required for a new employee if the employee can show proof of attending training given by another state agency, within the time frame that satisfies the requirements of this chapter.

If the sexual harassment awareness and prevention training is waived for a new employee the agency must review their sexual harassment policy with the new employee. The employee must take the next training within five years of completion of the sexual harassment awareness and prevention training or within three years of completion of the managers' roles and responsibilities training with their former state agency.

AMENDATORY SECTION (Amending WSR 07-03-053, filed 1/12/07, effective 2/15/07)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department of enterprise services administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-135 What causes an individual's name to be removed from a layoff list? (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the

internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer or the director's office determines good and sufficient reason exists.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list? (1) Requests for review of removal from a layoff list must be made to the employer when:

(a) The removal is based on the employer's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d); or

(b) The employer is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (c).

If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal.

(2) Requests for review of removal from a layoff list must be made ~~((to the director))~~ in accordance with WAC 357-49-010 when:

(a) The removal is based on the ~~((department's))~~ determination by the director's office that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d);

(b) The department of enterprise services is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(a), (b) or (c); or

(c) The individual is not in agreement with the results of the employer's review of the removal.

(3) The request for a review must be received at the employer's office within twenty ~~((20))~~ calendar days or the director's office within thirty ~~((30))~~ calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

WAC 357-49-010 For what actions may an individual request a director's review? (1) If the department of enterprise services is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results ~~((of))~~. If the director's office is responsible for the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175 the individual may request a director's review. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or

(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) In addition to the subject listed in ~~((section))~~ subsection (2) of this ~~((rule))~~ section, an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) ~~((Allegations arising from the development and adoption of the classification plan under the provisions of WAC 357-10-020;~~

~~((b)))~~ An alleged violation of civil service laws or rules pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection (2) of this section; or

~~((c)))~~ (b) The actions of reduction, dismissal, suspension, demotion or separation.

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules.

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

WAC 357-52-030 Are standardized forms available for filing appeals? The ~~((department))~~ director's office makes standardized forms available for filing appeals. Appellants may prepare and use their own appeal documents. Appellants' documents must contain all of the information required by WAC 357-52-020.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-015 Who is authorized to adopt rules for the WMS? The director ~~((of the department of personnel))~~ adopts the WMS rules after consultation with state agencies.

AMENDATORY SECTION (Amending WSR 10-11-076, filed 5/14/10, effective 6/15/10)

WAC 357-58-050 What chapters of civil service rules apply to WMS positions? Other chapters of civil service rules do not apply to WMS positions or employees except for the chapters listed below. If a WMS issue is identified that the director ~~((of the department of personnel))~~ has not specifically addressed in the adoption of the WMS rules, the other civil service rules do not apply or take precedence in addressing the issue.

Except where specifically stated otherwise, the following chapters apply to positions or employees included in the WMS.

~~((WAC))~~ chapter 357-04 WAC General provisions
~~((WAC 357-07 Public records~~
~~WAC))~~ chapter 357-22 WAC Personnel files
~~((WAC))~~ chapter 357-25 WAC Affirmative action program
~~((WAC))~~ chapter 357-26 WAC Reasonable accommodation
~~((WAC))~~ chapter 357-31 WAC Leave
~~((WAC))~~ chapter 357-34 WAC Employee training and development
~~((WAC))~~ chapter 357-37 WAC Performance management
~~((WAC))~~ chapter 357-40 WAC Discipline
~~((WAC))~~ chapter 357-43 WAC Employee business units
~~((WAC))~~ chapter 357-52 WAC Appeals

AMENDATORY SECTION (Amending WSR 07-11-092, filed 5/16/07, effective 7/1/07)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

(1) **Competencies.** Those measurable or observable knowledge, skills, abilities, and behaviors critical to success in a key job role or function.

(2) **Director.** State human resources director within the office of financial management.

(3) **Dismissal.** The termination of an individual's employment for disciplinary purposes.

~~((3))~~ (4) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((4))~~ (5) **Evaluation points.** Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((5))~~ (6) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((6))~~ (7) **Management bands.** Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

~~((7))~~ (8) **Performance management confirmation.** Approval granted by the director ~~((of the department of personnel))~~ to an employer allowing the employer to link individual employee performance to compensation or layoff decisions.

~~((8))~~ (9) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions, or circumstances associated with the job.

~~((9))~~ (10) **Reassignment.** A reassignment is an employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

~~((10))~~ (11) **Review period.** The review period is a period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((11))~~ (12) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((12))~~ (13) **Separation.** Separation from state employment for nondisciplinary purposes.

~~((13))~~ (14) **Suspension.** An absence without pay for disciplinary purposes.

~~((14))~~ (15) **Transfer.** A WMS transfer is an employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((15))~~ (16) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((16))~~ (17) **Washington management service (WMS).** Washington management service is the system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-080 How are positions assigned to the management bands? Each agency must evaluate its WMS positions using a managerial job value assessment chart developed by the ~~((department of personnel))~~ director's office. The number of points resulting from the evaluation determines the management band to which a position is assigned.

AMENDATORY SECTION (Amending WSR 05-21-060, filed 10/13/05, effective 11/15/05)

WAC 357-58-085 Can WMS salaries be set outside the maximum of an assigned management band? Compensation for a WMS position may be set outside the maximum of the assigned management band when allowed under any provision of this chapter or when approved by the ~~((department of personnel))~~ director.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-105 When can exceptions to the progression increase limits be made? Only the director ~~((of the department of personnel))~~ may grant requests for exception to the progression increase limit.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-130 Do salary increases greater than five percent for a group of employees need approval? Salary changes greater than five percent proposed for any group of employees must be reviewed and approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-135 Who can provide lump sum performance recognition payment to employees? The director ~~((of the department of personnel))~~ or an agency that has received performance management confirmation for decentralized compensation administration may provide additional pay to employees on a lump sum basis. Such payment to an individual or group of employees is to recognize outstanding performance or the achievement of predefined work goals. Any pay granted under this section is a premium that is not part of the base salary.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

WAC 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay? Over an annual period, performance recognition pay may not exceed fifteen percent of an employee's annual base salary unless approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

WAC 357-58-395 What will be the role of the department of ~~((personnel))~~ enterprise services? The department of ~~((personnel))~~ enterprise services shall assist state agencies by providing a quality developmental and leadership training program and consultative and technical assistance to help agencies address the development needs of their managers.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees? Employers may request performance management confirmation from the director ~~((of the department of personnel))~~ for WMS employees. The director ~~((of the department of personnel))~~ will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor performance into compensation, recognition leave and layoff decisions. If the director ~~((of the department of personnel))~~ determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-435 What elements will the director ~~((of the department of personnel))~~ evaluate to determine if an employer should be granted performance management confirmation? The director ~~((of the department of personnel))~~ will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures, and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based compensation;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

AMENDATORY SECTION (Amending WSR 05-12-072, filed 5/27/05, effective 7/1/05)

WAC 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken? Each agency will develop procedures to reconsider agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request reconsideration. At a minimum, the agency's procedure must allow an employee to request reconsideration of the following:

- (1) Salary adjustment (or lack thereof) when the responsibilities of the permanent employee's position have been changed.
- (2) Placement following reversion of a permanent employee.
- (3) Decisions about whether or not a position is included in the WMS. When reconsidering decisions concerning inclusion in WMS the following apply:
 - (a) The final agency internal decision must be made by the agency director or designee.
 - (b) If the incumbent disagrees with the agency director/designee's decision, he/she may request a director's review by the director ~~((of the department of personnel))~~, as long as such request is made within fifteen calendar days of notification of the decision. Such review will be limited to relevant documents and information and will be final.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-546 What is the ~~((department's))~~ director's authority to review actions taken by an agency under chapter 357-58 WAC or to audit an agency's WMS processes? (1) Under the authority of ~~((RCW 41.06.130 and))~~ chapter 43, Laws of 2011 and RCW 41.06.500, the director ~~((of the department of personnel))~~ retains the right to review:

- (a) Any action taken by an agency under chapter 357-58 WAC; and
- (b) An agency's administration of the WMS program.
- (2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands? (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the ~~((department))~~ director's office.

(2) The inclusion and evaluation procedure must be approved by the director.

(3) The procedure must include processes for requesting and determining inclusion and evaluating and ~~((re-evaluating))~~ reevaluating positions for placement within management bands. The procedure must require, at a minimum:

(a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the ~~((department))~~ director's office regarding WMS issues.

(b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or ~~((re-evaluate))~~ reevaluate WMS positions.

(c) Approval of the request for inclusion or evaluation by the position's agency head or designee.

(d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:

- ~~((i))~~ (i) The agency's WMS coordinator;
- ~~((ii))~~ (ii) A manager from the agency who has comprehensive knowledge of the agency's business; and
- ~~((iii))~~ (iii) A management representative from another agency or human resource professional from another agency.

(e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-055 What civil service rules do not apply to WMS? Except where specifically stated otherwise,

the following WAC chapters do not apply to positions or employees included in the Washington management service:

- ~~((WAC))~~ Chapter 357-01 WAC, Definitions
- ~~((WAC 357-10 Personnel resources board classification WAC))~~ Chapter 357-13 WAC, Classification
- ~~((WAC))~~ Chapter 357-16 WAC, Recruitment, assessment, and certification
- ~~((WAC))~~ Chapter 357-19 WAC, Appointments and reemployment
- ~~((WAC))~~ Chapter 357-28 WAC, Compensation
- ~~((WAC))~~ Chapter 357-46 WAC, Layoff and separation
- ~~((WAC))~~ Chapter 357-49 WAC, Director's reviews

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-075 What is the requirement for agencies to develop compensation policies? Each agency must develop salary administration policies that are consistent with this chapter and guidelines established by the ~~((department))~~ director's office for WMS positions.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities? (1) Agencies must submit their WMS activity reports to the ~~((department))~~ director's office and make them available as prescribed by the ~~((department))~~ director's office.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

**WSR 11-20-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-262—Filed September 30, 2011, 11:13 a.m., effective October 3, 2011, 6:00 a.m.]

Effective Date of Rule: October 3, 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 220-32-05100J; 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); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife com-

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the seventh weekly commercial gillnet fishing period for the 2011 fall season. Continues to allow the sale of platform and hook-and-line-caught fish from mainstem tribal fisheries (above and below Bonneville Dam), and fish caught in Yakama Nation tributary fisheries. Based on in-season forecasts, adult fall chinook and steelhead are available for treaty Indian harvest. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 Management Agreement. Rule is consistent with action of the Columbia River compact on May 10 and September 29, 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 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: September 30, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100K 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 (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 October 3 through 6:00 PM October 6, 2011.
 - b. Gear: Gill nets only. Minimum mesh size is 8 inches.
 - c. Allowable sales: Salmon, steelhead, shad, yellow perch, bass, walleye, carp and catfish may be sold or retained for subsistence. 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.
 - d. Standard sanctuaries in effect. Spring Creek sanctuary is reduced to a 150-foot diameter around the hatchery ladder.
2. 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 sales: Salmon, steelhead, shad, yellow perch, bass, carp and catfish. 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 only.
 - d. Standard sanctuaries in effect.
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, yellow perch, bass, carp and catfish.

4. 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.

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.

a. Season: Immediately until further notice.

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

c. Allowable sales: Salmon, steelhead, shad, carp, catfish, walleye, bass, and yellow perch. Sturgeon retention is prohibited; 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.

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

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.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 3, 2011:

WAC 220-32-05100J Columbia River salmon seasons above Bonneville Dam. (11-251)

WSR 11-20-060

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 11-261—Filed September 30, 2011, 12:07 p.m., effective October 1, 2011]

Effective Date of Rule: October 1, 2011.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Rainbow trout (with clipped adipose fins) are stocked annually in Lake Scanewa as part of Lewis County PUD's federal license to operate Cowlitz Falls Dam. Many of these fish still remain available for harvest, and these regulations are proposed to provide an increased opportunity for the angling public to harvest these fish this fall. The increased daily catch limit is intended to increase participation in this fishery and allow increased harvest of the fish that have grown to a larger size. 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: September 30, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Scanewa Lake. Notwithstanding the provisions of WAC 232-28-619, effective October 1, 2011, until further notice, special daily limit of ten Rainbow trout (with clipped adipose fin). Minimum size 8 inches in length. Release cut-throat. Release rainbow trout except those having a clipped adipose fin and a healed scar at the location of the clipped fin.

WSR 11-20-063

EMERGENCY RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 30, 2011, 3:33 p.m., effective October 1, 2011]

Effective Date of Rule: October 1, 2011.

Purpose: The department is amending the following WACs to implement annual adjustments to standards for the Washington Basic Food program:

- WAC 388-450-0185, to increase the standard deductions.
- WAC 388-450-0190, to raise the maximum shelter cost.
- WAC 388-450-0195, to increase the standard utility allowance.
- WAC 388-478-0060, to increase the maximum gross monthly income and maximum net monthly income; and to update the one hundred sixty-five percent poverty level income.
- WAC 388-470-0005, to increase the asset limit for households with a disabled or elderly member [during] fiscal year 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, and 388-470-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority: "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011; and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010.

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: The amendments update Basic Food standards for federal fiscal year 2012 to comply with requirements of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), SNAP USDA memo dated August 2, 2011, subject: SNAP Fiscal Year 2012 Cost of Living Adjustments memo dated December 2, 2010, and AN 11-37 FY 2012 Resource Increase for Households with an Elderly or Disabled Member dated August 30, 2011. The department is making these changes via the emergency rule-filing process, effective October 1, 2011. The department is concurrently working on the permanent rule-making process and has filed a preproposal statement of inquiry, CR-101, as WSR 11-08-069 dated April 6, 2011. The department plans to file a proposed rule making notice by the end of September.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: September 27, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-114, filed 11/17/10, effective 12/18/10)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$((142)) <u>147</u>
2	\$((142)) <u>147</u>
3	\$((142)) <u>147</u>
4	\$((153)) <u>155</u>
5	\$((179)) <u>181</u>
6 or more	\$((205)) <u>208</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 10-23-114, filed 11/17/10, effective 12/18/10)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred ~~((fifty-eight))~~ fifty-nine dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((fifty-eight))~~ fifty-nine dollars.

AMENDATORY SECTION (Amending WSR 10-18-050, filed 8/26/10, effective 10/1/10)

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-

CAP benefits? (1) We use a standard utility allowance (SUA) of three hundred ~~((eighty-five))~~ ninety-four dollars instead of your actual utility costs when we determine your assistance unit's:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) We considered the average cost of the following utilities to determine the value of the SUA:

(a) Heating and cooling fuel such as electricity, oil, or gas;

(b) Electricity;

(c) Water and sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(3) The department uses the SUA if you have utility costs separate from your rent or mortgage payment or if you receive a low income home energy assistance program (LIHEAP) benefit during the year.

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ~~((10-1-2009))~~ 10-1-2011

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,174)) <u>1,180</u>	\$(903)) <u>908</u>	\$200	\$(1,490)) <u>1,498</u>
2	((1,579)) <u>1,594</u>	((1,215)) <u>1,226</u>	367	((2,004)) <u>2,023</u>
3	((1,984)) <u>2,008</u>	((1,526)) <u>1,545</u>	526	((2,518)) <u>2,548</u>
4	((2,389)) <u>2,422</u>	((1,838)) <u>1,863</u>	668	((3,032)) <u>3,074</u>
5	((2,794)) <u>2,836</u>	((2,150)) <u>2,181</u>	793	((3,547)) <u>3,599</u>
6	((3,200)) <u>3,249</u>	((2,464)) <u>2,500</u>	952	((4,064)) <u>4,124</u>
7	((3,605)) <u>3,663</u>	((2,773)) <u>2,818</u>	1,052	((4,575)) <u>4,649</u>

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
8	((4,010)) <u>4,077</u>	((3,085)) <u>3,136</u>	1,202	((5,089)) <u>5,175</u>
9	((4,416)) <u>4,491</u>	((3,397)) <u>3,455</u>	1,352	((5,604)) <u>5,701</u>
10	((4,822)) <u>4,905</u>	((3,709)) <u>3,744</u>	1,502	((6,119)) <u>6,227</u>
Each Additional Member	+((406)) <u>414</u>	+((312)) <u>319</u>	+150	+((515)) <u>526</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 03-05-015, filed 2/7/03, effective 3/1/03)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance, medical assistance, and Basic Food? (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from the department.

(c) **"Fair market value (FMV)"** means the price at which you could reasonably sell the resource.

(d) **"Equity value"** means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance, family medical programs, or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance and family medical programs, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview; or

(c) The first day of the month of application, for medical assistance.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance and applicants for family medical programs, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

(7) Recipients of family medical programs do not have a resource limit.

(8) We do not count your resources for children's medical or pregnancy medical benefits.

(9) For SSI-related medical assistance, see chapter 388-475 WAC.

(10) For clients receiving institutional or wavered services, see chapters 388-513 and 388-515 WAC.

(11) If your household consists of more than one medical assistance unit (MAU), as described in WAC 388-408-0055, we look at the resources for each MAU separately.

(12) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(13) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand two hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand dollars for all other AUs.

(14) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For medical assistance and Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

(15) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(16) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(17) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(18) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

WSR 11-20-072

EMERGENCY RULES DEPARTMENT OF

ENTERPRISE SERVICES

[Filed October 3, 2011, 12:38 p.m., effective October 3, 2011, 12:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: These emergency rules immediately repeal the department of general administration's (GA) rules dealing with public records and immediately adopt the department of enterprise services (DES) rules dealing with public records.

Citation of Existing Rules Affected by this Order: Repealing chapter 236-56 WAC.

Statutory Authority for Adoption: RCW 43.19.011.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: Chapter 43, Laws of 2011 1st sp. sess. (ESSB 5931), as of October 1, 2011, creates DES, eliminates GA as a state agency, and assigns all of GA's powers and duties to DES. Chapter 42.56 RCW requires state agencies to publish procedures dealing with public records. The permanent rule is scheduled for completion by January 27, 2012.

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 17, Amended 0, Repealed 15.

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: October 1, 2011.

Jack Zeigler
Rules Coordinator

Chapter 200-01 WAC

PUBLIC RECORDS

NEW SECTION

WAC 200-01-010 Purpose. The purpose of this chapter is to provide rules for the department of enterprise services to implement the provisions of chapter 42.56 RCW relating to public records and to ensure compliance with that chapter.

NEW SECTION

WAC 200-01-015 Definitions. The definitions set forth in RCW 42.56.010 apply throughout this chapter. In addition, the definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Days" means calendar days unless otherwise stated.

(2) "DES" or "department" means the department of enterprise services established in chapter 43, Laws of 2011. Where appropriate, DES or agency also refers to the staff and employees of the department of enterprise services.

(3) "Director" means the director of the department of enterprise services.

(4) "Page" means one impression on a single side of a sheet of paper. It also applies to one electronic image of one side of a sheet of paper.

(5) "Public records officer" means the public records officer or designee for the department of enterprise services appointed by the director.

NEW SECTION

WAC 200-01-020 Description of the department of enterprise services. The department, created in chapter 43, Laws of 2011, provides centralized leadership in efficiently and cost-effectively managing resources necessary to support the delivery of state government services. The department is an administrative, service and regulatory state agency. The administrative office of the department and its staff are located at 1500 Jefferson Ave., Olympia, Washington 98504.

NEW SECTION

WAC 200-01-025 Organizations, operations, and procedures. The department will provide centralized services to diverse customer groups. DES includes the following divisions, which are responsible for the services set forth below:

(1) IT systems and services. This division assists agency purchases of hardware and software, provides agency IT support, designs system integration and public facing web sites, and, in addition, maintains statewide payroll and financial systems and our network infrastructure.

(2) Services division. This division provides essential services to state agencies, including motor pool, printer, mail and surplus services.

(3) Facilities. This division locates, builds, and maintains office space, including the buildings and grounds on the capitol campus.

(4) Personnel services. This division supports state agencies and state workers by providing training, employee assistance, job seeker support and recruitment services.

(5) Contracts and legal affairs. This division supports agency and government partners in purchasing, and provides claims management and tort resolution through its risk management services.

(6) Policy planning and performance. This division assists the department in optimizing current functions to become more efficient and effective, while planning the department's future development.

(7) Government and stakeholder relations. This division represents the department in the legislature, builds strong customer relations, and supports the department in coordinating with its stakeholder groups on complex issues.

NEW SECTION

WAC 200-01-030 Public records officer. (1) The public records officer is appointed by the director and is located in the contracts and legal affairs division of the department.

(2) The public records officer is in charge of the department's public records program. The public records officer is responsible for the implementation of the department's rules regarding the release of public records for inspection and copying, coordinating the department staff in this regard, and overseeing compliance with the Public Records Act requirements in chapter 42.56 RCW.

(3) The public records officer may choose a designee to act in his or her place to carry out the responsibilities in this chapter, including processing and responding to public

records requests. The department's public records officer will provide the fullest assistance to requestors.

NEW SECTION

WAC 200-01-035 Availability of records. Public records are available for inspection and the preparation of requested copying during the department's normal business hours. For the purposes of this chapter, normal business hours of DES are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. Records must be inspected at the main office of the department or other agency location as applicable.

NEW SECTION

WAC 200-01-040 Processing of public records requests—Request. (1) Any person wishing to inspect or copy public records of DES may submit the request in writing using the department's request form, or by letter, fax, or e-mail addressed to the public records officer. The request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer to locate the records; and
- The date and time of day of the request.

(2) If the requestor wishes to have copies of the records made instead of inspecting them, he or she should so indicate. Costs will be assessed in compliance with WAC 200-01-xxx.

(3) A request form is available for use by requestors at the office of the public records officer and on-line at des.wa.gov.

(4) The public records officer may accept public records requests by telephone or in person; however, the requesting party may be asked to reduce the request to writing. In the alternative, the public records officer may confirm receipt of the request and restate the substance of the request in writing.

NEW SECTION

WAC 200-01-045 Processing of public records requests—Response. (1) Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available; or
- (e) Deny the request.

(2) In the event that the requested records contain information that may affect rights of others and may be exempt

from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure pursuant to RCW 42.56.540. The notice to the affected persons will include a copy of the request.

(3) Some records are exempt from disclosure, in whole or in part. If DES believes that a record is exempt from disclosure and should be withheld, the public records officer will identify the record, state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer will redact the exempt portions, provide the nonexempt portions, state the specific exemption and provide a brief explanation of why the portions of the record are exempt from disclosure.

(4) When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that DES has closed the request.

NEW SECTION

WAC 200-01-050 Inspection of public records. (1)

Consistent with other demands, DES will provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.

(2) After inspection is complete, the requestor shall indicate which documents he or she wishes the agency to copy. Consistent with other demands and the volume of documents requested, DES may copy the document at that time or provide the copies to the requestor at a later date.

(3) The requestor must claim or review the assembled records within thirty days of the department's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the department may close the request and refile the assembled records. If the requestor makes a request for the same records, it will be processed as a new request.

(4) When the inspection of the requested records is complete and all requested copies are provided, the public records officer will indicate that DES has completed its search for the requested records and made any located nonexempt records available for inspection.

NEW SECTION

WAC 200-01-055 Protection of public records. (1)

The department will maintain its records in a reasonably organized manner. The department will take reasonable actions to protect records from damage and disorganization. A requestor shall not take DES records from DES offices

without the permission of the public records officer. A variety of records is available on the DES web site at (web site address). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(2) Records will be made available to the requestor subject to the following restrictions:

(a) The records may not be removed from the area designated.

(b) The quantity of records may be limited in accordance with the requested use.

(c) All possible care will be taken by the requestor to prevent damage to the records.

(d) Records may not be marked, altered, cut or mutilated in any way.

(e) Use of liquids and fountain pens and eating, drinking, and smoking while utilizing the records is prohibited.

(f) Records shall not be defaced in any way including writing on, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that may already exist in the file.

(g) Records must be kept in the order in which received.

(h) All copying of records will be done by departmental personnel.

(i) Records will be returned to the public records officer or his designee by the requestor when no longer required and no later than the end of the customary office hours as set forth in WAC 200-01-xxx.

NEW SECTION

WAC 200-01-060 Response to public records request—Installments. (1) When a public records request involves a large number of records, the public records officer may provide access for inspection and copying in installments pursuant to RCW 42.56.080.

(2) The requestor will be notified when an installment is ready for inspection. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer may stop searching for the remaining records and close the request.

(3) When the request is for copies of public records, the public records officer may require payment for each installment either prior to providing the installment or prior to providing the next installment. In addition, the requestor may be required to provide a deposit up to ten percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost within thirty days of the due date, the public records officer may stop searching for and copying the remaining records and close the request.

NEW SECTION

WAC 200-01-065 Processing public records requests—Electronic records. (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests records in an electronic format, the public records officer will provide available non-exempt electronic public records or portions of such records that are reasonably locatable in an electronic format that is

used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Whenever possible, DES will provide records in electronic format. If the department has only a paper copy of the record, the department, when feasible, may scan the paper record and provide the resulting electronic copy to the requestor. If the department maintains the record in electronic format, the record will be provided in that electronic format unless the requestor specifically asks to receive the record in paper copies or it is otherwise not feasible to provide the record in electronic format.

(4) If a record exists on a web page, DES will respond to a request for the record by providing the link to the record on the web page.

(5) DES is not required to create a record that does not otherwise exist.

(6) Costs for providing electronic records as provided in this section are governed by WAC 200-01-075.

NEW SECTION

WAC 200-01-070 Exemptions. (1) DES reserves the right to determine that a public record requested is exempt, in whole or in part, under the provisions of chapter 42.56 RCW or other applicable provision of law.

(2) In addition, there are exemptions outside the Public Records Act that restrict the availability of some documents held by DES for inspection and copying; to include RCW 4.92.210 (information in a claim filed with the office of risk management), and RCW 5.60.060 (attorney-client privilege).

(3) In addition, DES reserves the right to delete identifying details when it makes available any public record in cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.56 RCW.

(4) The department is prohibited by statute from disclosing lists of individuals for commercial purposes pursuant to RCW 42.56.070(9).

NEW SECTION

WAC 200-01-075 Costs of providing public records.

(1) There is no fee for inspecting public records. DES may impose a charge for providing public records.

(2) The charge for providing public records may be the actual cost incident to providing the records.

(a) The charge may include the actual cost of the postage or delivery, including the cost of the shipping container, cost of duplicating tape recordings, videotapes, photographs, slides, disks or similar media.

(b) The cost of electronic copies of records shall be (amount) for information on a CD-ROM. (If the agency has scanning equipment at its offices: The cost of scanning existing (agency) paper or other nonelectronic records is (amount) per page.) There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) If the actual cost is too burdensome or cannot be obtained, DES may charge fifteen cents for each page, however produced.

(4) Before beginning to copy public records, the public records officer may require:

(a) A deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor;

(b) The payment of the remainder of the copying costs before providing all the records; or

(c) The payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(5) Payment may be made by cash in the exact amount charged, check, or money order to the department of enterprise services.

NEW SECTION

WAC 200-01-080 Review of denials of public records. (1)(a) Any person who has been denied an opportunity to inspect or copy a public record by an agency or who believes that an agency has not made a reasonable estimate of the time required to respond to a public record request may petition the agency for prompt review of its decision.

(b) The petition shall be in writing and shall include a copy of, or reasonably identify, the written statement by the public records officer denying the request or providing the estimate.

(c) The petition shall be sent to the public records officer who shall promptly provide the petition and any other relevant information to the agency official designated by the agency to conduct the review.

(2) The designated agency official will immediately consider the petition and either affirm or reverse the denial or the estimate. This review will be complete within two business days following DES' receipt of the petition, or within such times as mutually agreed by DES and the requestor.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

NEW SECTION

WAC 200-01-085 Records index. (1) The state general records retention schedule and the department's unique records retention schedule, as established and approved by the state records committee, serve as the index for the identification and location of the department's records, including those described in RCW 42.56.070(5).

(2) The current index, as described in subsection (1) of this section, is available to all persons under the same rules and on the same conditions as are applied to public records available for inspection. The index can be found on the DES web site at des.wa.gov.

NEW SECTION

WAC 200-01-090 Communications with the agency. All communications with DES to access public records of the

department or seek assistance in making such a request, or for the purpose of obtaining information, making submittals or requests, or making inquiries concerning the agency's rules for compliance with chapter 42.56 RCW shall be addressed as follows:

Department of Enterprise Services
Public Records Officer
1500 Jefferson Ave.
P.O. Box 42445
Olympia, WA 98504-2445

The telephone number of the public records officer is 360-407-8768, or you can e-mail your request to publicdisclosure@des.wa.gov.

Information is also available at the DES web site at des.wa.gov.

WSR 11-20-074

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed October 3, 2011, 1:05 p.m., effective October 3, 2011, 1:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: Part I of chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143) changed the apportionment and nexus requirements for apportionable activities, effective June 1, 2010. The department has adopted the following emergency rules to explain how these requirements apply:

- WAC 458-20-19402 (Rule 19402) Single factor receipts apportionment—Generally.
- WAC 458-20-19403 (Rule 19403) Single factor receipts apportionment—Royalties.
- WAC 458-20-19404 (Rule 19404) Financial institutions—Income apportionment.

Changes from the previous emergency rule filed May 27, 2011, under WSR 11-12-058 (Rules 19402 and 19403) and WSR 11-12-062 (Rule 19404) are as follows:

- The detailed discussion of the annual reconciliation process previously contained in Rule 19402 has been replaced with a reference to the department's form for submitting the reconciliation. Also, the cross references to the detailed discussion in Rule 19402 (that previously existed in Rules 19403 and 19404) have been replaced with similar language.
- The explanation of how interest applies to underpayments and overpayments as determined by the annual reconciliation has been clarified in all three rules.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Reasons for this Finding: An emergency adoption of these new rules is necessary because permanent rules cannot be adopted at this time.

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 3, 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 3, 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: October 3, 2011.

Alan R. Lynn

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 11-21 issue of the Register.

WSR 11-20-094

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-264—Filed October 4, 2011, 4:47 p.m., effective October 5, 2011]

Effective Date of Rule: October 5, 2011.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900Z; 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: An estimated 20,000 coho are expected to return this year above Rock Island Dam. This number is in excess of spawning escapement and hatchery broodstock needs. The population is not listed under the Endangered Species Act.

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: October 4, 2011.

Sara G. LaBorde
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Exceptions to statewide rules—Methow, Wenatchee and Icicle rivers. 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) Effective October 5, 2011 through October 31, 2011, it is permissible to fish for coho salmon from the mouth of the Wenatchee River to the mouth of the Icicle River, including the Icicle River from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam; daily limit three coho salmon, minimum size 12 inches, selective gear rules are in effect, no bait allowed, night closure in effect, release all floy (anchor) tagged coho, release all coho with one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

(2) Effective October 5, 2011 through October 31, 2011, it is permissible to fish for coho salmon from the mouth of the Methow River to the confluence with the Chewuch River in Winthrop. Fishing from a floating device is prohibited from the second powerline crossing one mile upstream from the mouth) to the lowermost Hwy 153 bridge (four miles upstream from the mouth). Daily limit three coho salmon, minimum size 12 inches, selective gear rules are in effect, no bait allowed, night closure in effect, release all floy (anchor) tagged coho, release all coho with one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

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 November 1, 2011:

WAC 232-28-61900Z Exceptions to statewide
rules—Methow, Wenatchee
and Icicle rivers.