

WSR 12-11-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-77—Filed May 2, 2012, 4:36 p.m., effective May 2, 2012, 4:36 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-10500E; and amending WAC 220-56-105.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-upon management plans, and are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 2, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 220-56-10500F River mouth definitions. Notwithstanding the provisions of WAC 220-56-105, when pertaining to angling for the White Salmon River, any reference to the mouth shall be construed to include those waters upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost uplands" shall be construed to mean those lands not covered by water during an ordinary high tide.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-10500E River mouth definitions.
 (12-69)

WSR 12-11-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-78—Filed May 3, 2012, 3:45 p.m., effective May 3, 2012, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
 Amending WAC 220-56-220 [220-55-220].

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans that were agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-upon management plans, and are interim until permanent rules take effect.

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: May 3, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 220-55-22000B Two-pole endorsement. Notwithstanding the provisions of WAC 220-55-220:

(1) Anglers who are in possession of a valid two-pole endorsement may fish in the following river sections:

(a) Columbia River - From Priest Rapids Dam to Wanapum Dam, from Wanapum Dam to Wells Dam, From Wells Dam to Highway 173 Bridge at Brewster, and from Highway 173 at Brewster to Chief Joseph Dam.

(b) Cowlitz River - Lexington Bridge Drive in Kelso upstream to the Highway 505 Bridge in Toledo.

(c) Drano Lake - Waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery from May 12 through June 30.

(d) Lewis River - From the mouth to Colvin Creek.

(e) Wind River - From the mouth to the Burlington Northern Railroad Bridge through June 30.

(2) Anglers who are in possession of a valid two-pole endorsement may fish in the following marine areas:

(a) Willapa Bay - Area 2.1 east of line from Cape Shoalwater to Leadbetter Point.

(b) Port Susan and Port Gardner Area 8.2, Tulalip Terminal Area - waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point.

WSR 12-11-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-79—Filed May 3, 2012, 3:45 p.m., effective May 3, 2012, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-500.

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans.

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: May 3, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-56-50000B Game fish seasons—2012 Notwithstanding the provisions of WAC 220-56-500, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Rivers, streams, and beaver ponds that drain into the coast (excluding the Columbia River) are closed to fishing unless otherwise provided for in WAC 232-28-619.

WSR 12-11-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-80—Filed May 4, 2012, 5:16 p.m., effective May 4, 2012, 5:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-22000B [220-55-22000B]; and amending WAC 220-56-220 [220-55-220].

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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans.

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: May 4, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-55-22000C Two-pole endorsement. Notwithstanding the provisions of WAC 220-55-220, WAC 232-28-619, WAC 232-28-620 and WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Anglers who are in possession of a valid two-pole endorsement may fish with two poles in the following river sections during open seasons:

(a) Columbia River - From Priest Rapids Dam to Wanapum Dam, from Wanapum Dam to Wells Dam, from Wells Dam to the Highway 173 Bridge at Brewster, and from the Highway 173 at Brewster to Chief Joseph Dam.

(b) Cowlitz River - Lexington Bridge Drive at Lexington upstream to the Highway 505 Bridge in Toledo.

(c) Drano Lake - Waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery.

(d) Lewis River - From the railroad bridge near Kuhns Road upstream to the mouth of East Fork Lewis River.

(e) Lewis River, North Fork - From the mouth to Johnson Creek.

(f) Wind River - From the mouth to the Burlington Northern Railroad Bridge.

(2) Anglers who are in possession of a valid two-pole endorsement may fish with two poles in the following marine areas during open seasons:

(a) Willapa Bay - Area 2.1 east of line from Cape Shoalwater to Leadbetter Point.

(b) Port Susan and Port Gardner Area 8.2, Tulalip Terminal Area - waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-22000B Two-pole endorsement. (12-78)

Reviser's note: The repealer appears above as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 220-56-22000B should be WAC 220-55-22000B.

WSR 12-11-027

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 8, 2012, 1:25 p.m., effective May 12, 2012]

Effective Date of Rule: May 12, 2012.

Purpose: The department is amending chapter 388-106 WAC, Long-term care services. Amendments are necessary to implement adult day health (ADH) changes as required under 2ESHB 1087 (2011-2013 operating budget).

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0815.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 2ESHB 1087.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: The department added ADH services and eligibility into the community options program entry system (COPES) waiver effective September 1, 2011, as a result of the legislation action under 2ESHB 1087. The department was directed to eliminate ADH service under the state plan 1915(i) option and to reestablish it under the COPES waiver under WAC 388-106-0300 and 388-106-0305. This filing replaces and supersedes the CR-103E filed as WSR 12-03-064 on January 12, 2012. The department is proceeding with filing a CR-102 for a public hearing. Also, the department is waiting for the governor to sign 3ESHB 2127 (2012 supplemental budget) which the legislature proposes the department to eliminate ADH under the state plan 1915(i) option and shall reestablish it under the long-term care home and community-based waiver.

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

Date Adopted: May 7, 2012.

Katherine I. Vasquez
Rules Coordinator

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

WAC 388-106-0815 Am I eligible for adult day health? ~~((1) You are eligible for adult day health services if you meet all of the following criteria. You are:~~

- ~~(a) Age eighteen years or older.~~
- ~~(b) Enrolled in one of the following medical assistance programs:~~
 - ~~(i) Categorically needy (CNP);~~
 - ~~(ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);~~
 - ~~(iii) General assistance—Expedited medicaid disability (GA-X); or~~
 - ~~(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).~~
- ~~(c) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and~~
 - ~~(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and~~
 - ~~(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and~~
 - ~~(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.~~
- ~~(d) Assessed as having needs for personal care or other care services, whether or not those needs are otherwise met.~~

~~(2) You are not eligible for adult day health if you:~~

- ~~(a) Can independently perform or obtain the services provided at an adult day health center;~~
- ~~(b) Have referred care needs that:~~
 - ~~(i) Exceed the scope of authorized services that the adult day health center is able to provide;~~
 - ~~(ii) Do not need to be provided or supervised by a licensed nurse or therapist;~~
 - ~~(iii) Can be met in a less structured care setting; or~~
 - ~~(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.~~
- ~~(c) Live in a nursing home or other institutional facility; or~~
- ~~(d) Are not capable of participating safely in a group care setting.)~~ You are eligible for adult day health if you meet the conditions described in WAC 388-106-0300 or 388-106-0305.

**WSR 12-11-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-74—Filed May 14, 2012, 1:55 p.m., effective May 14, 2012, 1:55 p.m.]

Effective Date of Rule: Immediately.

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: These regulations are needed to implement commission actions taken in February 2012. 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: May 14, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. **Rivers, streams, and beaver ponds that drain into the Pacific Ocean (excluding the Columbia River):** Closed to fishing unless listed as open.

2. **Ahtanum Creek, including North and Middle Forks (Yakima Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.

3. **Aldwell Lake (Clallam Co.):** Closed to fishing.

4. **Allen Creek (Thurston Co.):** Closed to fishing.

5. **Beaver Creek (Thurston Co.):**

a. **From mouth to I-5:** First Saturday in June until further notice: Anti-snagging rule rescinded.

- b. **Upstream of I-5:** Closed waters.
- c. **All tributaries:** Closed waters.
6. **Black River (Grays Harbor/Thurston Counties)**
- a. **From Highway 12 to bridge on 128th Avenue SW:** Selective gear rules and single-point hook requirement rescinded. Barbless hooks required.
- b. **All tributaries except Mima, Waddell, and Dempsey creeks, and those sections of Salmon and Beaver creeks and Blooms Ditch downstream of I-5:** Closed waters.
7. **Blooms Ditch (Thurston Co.): (Black River tributary)**
- a. **From mouth to I-5:** First Saturday in June until further notice: Night closure and selective gear rules apply.
- b. **Upstream of I-5:** Closed waters.
8. **Bogachiel River (Clallam Co.): From Highway 101 Bridge to Olympia National Park boundary:** Unlawful to fish from a floating device equipped with an internal combustion motor.
9. **Calawah River (Clallam Co.):**
From Highway 101 Bridge to forks: Unlawful to fish from a floating device equipped with an internal combustion motor.
10. **Cedar Creek (Jefferson Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.
11. **Chambers Creek (Pierce Co.): From Boise-Cascade Dam to Steilacoom Lake:** Anti-snagging rule rescinded. Selective gear rules apply.
12. **Chehalis River and all forks from high bridge on Weyerhaeuser 1000 line upstream (Grays Harbor Co.):** Open first Saturday in June 2012, until further notice. Selective gear rules apply. All species: Release all fish, except up to two hatchery steelhead may be retained per day.
13. **Clearwater River (Jefferson Co.): From Snahapish River upstream:** Effective the first Saturday in June until further notice: Unlawful to fish from a floating device equipped with an internal combustion motor.
14. **Clover Creek (Pierce Co.): upstream of Steilacoom Lake, including all tributaries:** Open July 1, 2012, until further notice.
15. **Columbia River:**
- a. **From the Highway 395 Bridge at Pasco to the old Hanford townsite (wooden towers) powerline crossing, in Sec. 30, T13N, R28E, except Ringold Area Bank Fishery waters:** Closed waters within a 400' radius of the Columbia Irrigation District (CID) fish barrier at the mouth of the CID wasteway at Columbia Park. Release all steelhead with a radio-tag wire protruding from the mouth, or with a disk or floy tag attached near the dorsal fin.
- b. **From the Highway 173 Bridge at Brewster to Chief Joseph Dam:** Closed to fishing from the Douglas County shore from the Chief Joseph Dam downstream 400 feet.
16. **Copalis River (Grays Harbor Co.):** Effective first Saturday in June, 2012, until further notice: Permissible to retain hatchery steelhead, defined as having a dorsal-fin height of less than 2 1/8 inches, or with an adipose or ventral fin clip.
17. **Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):** Effective June 1, 2012, until further notice: Trout daily limit 5.
18. **Deschutes River (Thurston Co.): From old U.S. Highway 99 Bridge near Tumwater to Henderson Boulevard Bridge near Pioneer Park:** Effective the first Saturday in June 2012, until further notice: Release all trout. Barbless hooks required.
19. **Dewatto River (Mason Co.): From Dewatto-Holly Road bridge upstream:** Effective first Saturday in June until further notice: Selective gear rules apply. Release all fish.
20. **Dungeness (Clallam Co.): From Gold Creek upstream:** Open the first Saturday in June 2012, until further notice.
21. **Elk River (Grays Harbor Co.) From confluence of east and middle branches upstream:** Season from first Saturday in June until further notice. Trout: Minimum length is 14 inches.
22. **Elwha River (Clallam Co.):** Closed.
23. **Fork Creek (Pacific Co.): (Willapa River tributary):**
- a. **From mouth to Forks Creek Hatchery rack:** Closed waters.
- b. **From Forks Creek Hatchery rack upstream 500 feet at fishing boundary sign:** Closed waters except for anglers who permanently use a wheelchair or have a designated harvester card. All species: night closure. Game fish: Open the first Saturday in June through July 15. Release all fish, except up to two hatchery steelhead may be retained per day.
- c. **From fishing boundary sign 500 feet above Forks Creek Hatchery rack, upstream:** All game fish: Effective first Saturday in June 2012, until further notice: Selective gear rules apply.
24. **Gray Wolf River (Clallam Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.
25. **Hanaford Creek (Lewis Co.): (Skookumchuck River tributary):** Permissible to fish from a floating device equipped with an internal combustion motor.
26. **Hoh River (Jefferson Co.): From DNR Oxbow Campground Boat Launch to Olympic National Park boundary below mouth of South Fork Hoh River:** Effective immediately until further notice: Unlawful to fish from a floating device equipped with an internal combustion motor.
27. **Humtulpis River, East Fork (Grays Harbor Co.): From concrete bridge on Forest Service Road 220 upstream:** Trout minimum length is eight inches.
28. **Humtulpis River, West Fork (Grays Harbor Co.): From Donkey Creek upstream:** Open the first Saturday in June 2012, until further notice. Selective gear rules apply.
29. **Kennedy Creek (Thurston/Mason Counties): From mouth to northbound Highway 101 Bridge:** Selective gear rules rescinded.
30. **Little Hoko River (Clallam Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.

31. **Little Nisqually River (Lewis Co.):** Selective gear rules rescinded, and it is unlawful to fish from a floating device equipped with an internal combustion motor.

32. **Lyre River (Clallam County):** From falls to source: Permissible to fish from a floating device equipped with an internal combustion motor.

33. **McAllister Creek (Thurston County):** Barbless hooks required.

34. **Mima Creek (Thurston Co.):** Night closure and anti-snagging rule rescinded.

35. **Mineral Creek (tributary to Nisqually River) and Mineral Creek, North Fork (Lewis Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.

36. **Moclips River (Grays Harbor Co.): from mouth to the Quinault Indian Reservation boundary:** Permissible to retain steelhead having a dorsal fin height of less than 2 1/8 inches or an adipose or ventral fin clip when the fishing season is open.

37. **Nemah River, Middle Fork (Pacific Co.):** Selective gear rules rescinded, and it is permissible to fish from a floating device equipped with an internal combustion motor.

38. **Nisqually River (Pierce Co.): From Alder Reservoir upstream, including all tributaries:** Open the first Saturday in June 2012, until further notice. Trout minimum length is 14 inches. Motors prohibited.

39. **Nooksack River, North Fork (Whatcom Co.): From mouth to Nooksack Falls:** Trout minimum length is 14 inches.

40. **North River (Pacific Co.): From Highway 105 Bridge to Salmon Creek:** Sturgeon: Open immediately until further notice. Minimum fork length is 38 inches, and maximum fork length is 54 inches. Daily limit is one fish.

41. **Palix River, including all forks (Pacific Co.): From the confluence to the Middle Fork upstream and all forks, including South Fork and Cannon River:** Effective first Saturday in June 2012, until further notice: Release all game fish except up to two hatchery steelhead may be retained.

42. **Puyallup River (Pierce Co.): From city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to Carbon River:** Game fish season is open only when salmon fishing is open. Trout minimum length is 14 inches.

43. **Quilcene River (Jefferson Co.):**

a. **From Rodgers Street to Highway 101 Bridge:** Unlawful to fish from a floating device equipped with an internal combustion motor.

b. **From electric weir at Quilcene National Fish Hatchery to upper boundary of Falls View Campground:** Permissible to fish from a floating device equipped with an internal combustion motor when fishing season is open.

44. **Salmon Creek (Thurston Co.) (Black River tributary):** Open the first Saturday in June 2012, until further notice. Anti-snagging rule rescinded. Trout minimum length is 14 inches.

45. **Samish River (Whatcom Co.): From mouth to I-5 Bridge:** Trout minimum length is 14 inches.

46. **Satsop River (Grays Harbor Co.): From 400 feet downstream of Bingham Creek Hatchery barrier dam, upstream to dam:** Trout minimum length is 14 inches.

47. **Skokomish River (Mason Co.): From Highway 101 Bridge to forks:** Unlawful to fish from a floating device equipped with an internal combustion motor.

48. **Smith Creek (near North River) (Pacific Co.): From mouth to Highway 101 Bridge:** Sturgeon: Open immediately until further notice. Minimum fork length is 38 inches and maximum fork length is 54 inches. Daily limit is one fish.

49. **Sol Duc River (Clallam Co.): From Highway 101 Bridge upstream of Klahowya Camp Ground to Olympic National Park boundary:** Unlawful to fish from a floating device equipped with an internal combustion motor.

50. **Stillaguamish River (Snohomish Co.): From mouth to Marine Drive, including all sloughs:** Year-round season. Trout minimum length is 14 inches.

51. **Teanaway River (Kittitas Co.):** Effective first Saturday in June until further notice, trout may be retained.

52. **Tieton River (Yakima Co.):** Permissible to fish from a floating device equipped with an internal combustion motor.

53. **Thompson Creek (Thurston Co.) (Skookumchuck River tributary):** Permissible to fish from a floating device equipped with an internal combustion motor.

54. **Union River (Mason Co.): From mouth to North Shore Road Bridge:** Sturgeon: Open June 1, 2012, through June 30, 2012. Minimum fork length is 38 inches, and maximum fork length is 54 inches. Daily limit is one fish.

55. **Van Winkle Creek (Grays Harbor Co.):** Open the first Saturday in June 2012, until further notice.

56. **Walla Walla River (Walla Walla Co.): From the Touchet River upstream to the state line:** During fishing season, daily limit of three hatchery steelhead for all tributaries except Mill Creek and Touchet River. Trout minimum length follows statewide rules.

57. **White Creek (Skagit Co.):** Release all fish, except up to two hatchery steelhead may be retained.

58. **White Chuck River (Snohomish Co.):** All species: Selective gear rules.

59. **White Salmon River (Klickitat/Skamania counties): From Northwestern Lake Road Bridge to Big Brothers Falls at River Mile 16:** Unlawful to fish from a floating device equipped with an internal combustion motor. Trout minimum length is eight inches. Catch and release, except up to two hatchery steelhead may be retained.

60. **Wildcat Creek (Grays Harbor Co.): (Cloquallum Creek tributary): From mouth to confluence of Middle and East forks:** Open the first Saturday in June until further notice. Selective gear rules apply.

61. **Wildcat Creek, East Fork (Grays Harbor Co.): (Cloquallum Creek tributary)**

a. **From Highway 108 Bridge (Simpson Avenue, in the town of McCleary) upstream:** Closed waters.

62. **Willapa River (Pacific Co.): From Fork Creek upstream:** Selective gear rules rescinded.

63. Willapa River, South Fork (Pacific Co.):

a. **From mouth to bridge on Pehl Road:** Selective gear rules effective the first Saturday in June 2012, through July 31, 2012.

b. **From Pehl Road upstream:** Effective the first Saturday in June 2012, until further notice: Selective gear rules rescinded. Permissible to fish from a floating device equipped with an internal combustion motor.

64. Wishkah River (Grays Harbor Co.):

a. **From mouth to 200 feet below the weir at the Wishkah Rearing Ponds:** Open the first Saturday in June 2012, until further notice. Trout: Minimum length is 14 inches.

b. **From 200 feet below to the weir at the Wishkah Rearing Ponds:** Closed waters.

c. **From weir upstream:** Open the first Saturday in June 2012, until further notice. All species: Selective gear rules apply.

65. Wynoochee River (Grays Harbor Co.):

a. **From mouth to WDFW White Bridge Access Site:** Trout: Minimum length is 14 inches.

b. **From WDFW White Bridge Access Site to 7400 Line Bridge above the mouth of Schafer Creek:** Open the first Saturday in June 2012, until further notice.

c. **From 7400 Line Bridge above the mouth of Schafer Creek, including area upstream of reservoir to Wynoochee Falls:** Open the first Saturday in June 2012, until further notice. **From 400 feet downstream of Wynoochee Dam, and from barrier dam near Grisdale:** Closed.

d. **From Wynoochee Falls upstream:** Open the first Saturday in June 2012, until further notice. All game fish: Selective gear rules apply. Trout: Eastern brook trout are not counted in daily trout limit, and the daily limit for this species is five fish, no minimum size.

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

Reviser's note: The spelling 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 12-11-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-82—Filed May 14, 2012, 4:09 p.m., effective May 15, 2012, 6:00 a.m.]

Effective Date of Rule: May 15, 2012, 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 220-32-05100Q; 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 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: Allows the sale of platform and hook and line caught fish from mainstem tribal fisheries in Zone 6 and downstream of Bonneville Dam consistent with tribal MOU/MOAs. Also allows the sale of fish caught in Yakama Nation tributary fisheries. Fisheries are consistent with the 2008-2017 management agreement and the associated biological opinion. Rule is consistent with action of the Columbia River compact on May 14, 2012. 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: May 14, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100R Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H, and in the Wind River, Klickitat River, Icicle River and Drano Lake and specific areas of SMCRA 1E, 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 a.m. Tuesday May 15, 2012 until further notice.

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

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

d. All Dam sanctuaries for these gear types are in effect.

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

a. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the

Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

b. Season: 6:00 a.m. Tuesday May 15, 2012 until further notice.

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

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

3. Columbia River Tributaries upstream of Bonneville Dam

a. Season: 6:00 a.m. Tuesday May 15, 2012 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, Wind River, Klickitat River, and Icicle Creek.

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

d. Allowable Sales: salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch.

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. May 15, 2012:

WAC 220-32-05100Q Columbia River salmon seasons above Bonneville Dam. (12-34)

**WSR 12-11-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-84—Filed May 14, 2012, 4:35 p.m., effective May 14, 2012, 4:35 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair-start provisions. 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: May 14, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600Y Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Klipsan Beach and the U.S./Canada Border, including Grays Harbor: Open.

(4) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until 8:00 a.m. June 1, 2012. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
Southwest Corner:	47°08.00 N. Lat.	124°25.50 W. Lon.
Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(5) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at

8:00 A.M., June 1, 2012, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

• Northeast Corner (Split Rock):	47°24.50 N. Lat.	124°20.00 W. Lon.
• Northwest Corner:	47°24.50 N. Lat.	124°32.40 W. Lon.
• Southwest Corner:	47°08.00 N. Lat.	124°25.50 W. Lon.
• Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(6) It is unlawful for a vessel to use more than 200 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve from 8:00 A.M. June 1, 2012, through 8:00 A.M. June 30, 2012. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
 - E-mail to: Carol Henry at Carol.Henry@dfw.wa.gov;
- or
- Telephone call to Carol Henry at 360-249-1296.

(7) The Quileute Special Management Area (SMA) opened to fishing for Dungeness crab 8:00 a.m. on May 1, 2012. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

• Northeast Corner (Cape Johnson)	47°58.00' N. Lat.	124°40.40' W. Lon.
• Northwest Corner:	47°58.00' N. Lat.	124°49.00' W. Lon.
• Southwest Corner:	47°40.50' N. Lat.	124°40.00' W. Lon.
• Southeast Corner (Destruction Island):	47°40.50' N. Lat.	124°24.43' W. Lon.

(8) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA through 8:00 a.m. June 1, 2012. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
 - E-mail to: Carol Henry at: Carol.Henry@dfw.wa.gov;
- or
- Telephone call to: Carol Henry at 360-249-1296

(9) All other provisions of the permanent rule remain in effect.

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

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 220-52-04600V Coastal crab seasons (12-42)

WSR 12-11-069
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-81—Filed May 15, 2012, 4:50 p.m., effective May 16, 2012]

Effective Date of Rule: May 16, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Yakama Nation (YN) and Washington department of fish and wildlife fishery managers are forecasting a harvestable return of adult hatchery spring chinook to the Yakima River in 2012. 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: May 15, 2012.

Philip Anderson
Director

NEW SECTION

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

(1) Effective May 16 through June 30, 2012, a person may fish for salmon in waters of the Yakima River from the Interstate 182 bridge in Richland (river mile 4.5) to the Grant

Avenue Bridge in Prosser (river mile 47.0) approximately 1,000 feet downstream of Prosser Dam. Daily limit of two hatchery Chinook, minimum size 12 inches in length. Terminal gear is restricted to one, single point, barbless hook with a hook gap from point to shank of 3/4 inch or less when fishing for salmon. Use of bait is allowed.

(2) Effective May 19 through July 31, 2012, a person may fish for salmon in waters of the Yakima River from the Interstate 82 bridge at Union Gap (river mile 107.1) to the BNSF railroad bridge approximately 500 feet downstream of Roza Dam (river mile 127.8). Daily limit of two hatchery Chinook, minimum size 12 inches in length. Only one, single point, barbless hook with a hook gap from point to shank of 3/4 inch or less is permitted. Selective Gear Rules, except use of bait and knotted nets is allowed. Use of boats equipped with an internal combustion engine is allowed only from the Interstate 82 bridge at Union Gap upstream to the east-bound (upstream) Interstate 82 bridge at Selah Gap. Night closure in effect.

(3) The Columbia River Salmon/Steelhead Endorsement is required to participate in this fishery (except for Free Fishing Weekend, June 9-10), in addition to a freshwater fishing license.

(4) In both areas open to salmon fishing, the use of two (2) fishing poles is permitted during the salmon fishery provided the participating angler has purchased a "Two-Pole Endorsement" (in addition to the freshwater fishing license and Columbia River salmon/steelhead endorsement).

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2012:

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

WSR 12-11-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-83—Filed May 15, 2012, 5:02 p.m., effective May 18, 2012, 12:01 a.m.]

Effective Date of Rule: May 18, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900P; 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 rule change is necessary to ensure a safe and successful event. The reason for closing

the lake is to ensure safety for the public as well as the event participants. There is expected to be more than six hundred youth participating in the fishing event and safety day program. 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: May 15, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Kress Lake (Cowlitz Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 18 through 6:00 p.m. May 19, 2012, it is unlawful to fish in those waters of Kress Lake, except open to fishing 10:00 a.m. through 3:00 p.m. May 19, 2012, to juvenile anglers participating in the fishing event and Safety Day program.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. May 19, 2012:

WAC 232-28-61900P	Exceptions to statewide rules—Kress Lake (Cowlitz Co.)
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WSR 12-11-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-87—Filed May 17, 2012, 1:00 p.m., effective May 17, 2012, 1:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

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

Reasons for this Finding: The Marine Area 2 recreational halibut fishery is projected to have taken the Pacific halibut quota set-aside for the primary season by the end of the day May 20, 2012. A separate quota set-aside is sufficient to continue to allow halibut fishing seven days per week in the northern nearshore area. This rule conforms to federal action taken by the National Marine Fisheries Service and the International Pacific Halibut Commission. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 17, 2012.

Philip Anderson
Director

NEW SECTION

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

(1) **Catch Record Card Area 1** - Open until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board. Fishery will reopen on August 3 through September 30, 2012, Fridays through Sundays only.

(2) **Catch Record Card Area 2** - Open through May 20, 2012, Sundays and Tuesdays only. See (i) and (ii) below for additional details.

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

47 ° 31.70 N. lat, 124 ° 37.03 W. long

47 ° 25.67 N. lat, 124 ° 34.79 W. long

47 ° 12.82 N. lat, 124 ° 29.12 W. long

47 ° 58.00 N. lat, 124 ° 24.24 W. long

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

(3) **Catch Record Card Areas 3 and 4** - Open through May 19, 2012, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

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

(4) **Catch Record Card Area 5** - Open May 24 through May 28, 2012, Thursday through Monday only. Open May 31 through June 23, 2012, Thursdays, Fridays and Saturdays.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open through May 19, 2012, Thursdays through Saturdays only. However, May 24 through May 28, 2012, open Thursday through Monday only. Open May 31 through June 2, 2012, Thursday, Friday and Saturday.

(6) **Catch Record Card Areas 11, 12, and 13** - Closed.

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

(8) It is unlawful to land halibut in a port closed to recreational halibut fishing, except halibut lawfully caught in Canada.

(9) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-255001 Halibut—Seasons—Daily and possession limits. (12-59)

**WSR 12-11-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-85—Filed May 17, 2012, 3:53 p.m., effective May 17, 2012, 3:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900M and 232-28-61900Q; 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: Based on the most recent chinook run estimate, the catch rates being observed, and projected harvest, the allowable catch of salmon for the Snake River in Washington will be reached sooner than initially identified. Because the wild portion of the run is protected under the Endangered Species Act (ESA), fisheries must be managed to remain within the guidelines of the ESA.

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: May 17, 2012.

Philip Anderson
Director

NEW SECTION

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

(1) Effective immediately until one hour after official sunset on May 18, 2012, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge at Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam. Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(2) Effective immediately until one hour after official sunset on May 18, 2012, a person may fish for and possess salmon in the following waters of the Snake River from the railroad bridge approximately 1/2 mile downstream of Tucannon River mouth, upriver to the fishing restriction boundary below Little Goose Dam, and from Little Goose Dam to the Corps of Engineers boat launch approximately 1

mile upstream of Little Goose Dam (along the south shoreline). This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Daily limit of two adult hatchery Chinook, plus four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) However, when fishing along "the wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one jack salmon. Anglers must cease fishing when the one allowed adult is retained.

Minimum size for Chinook is 12 inches in length.

(3) Effective immediately through May 31, 2012, a person may fish for and possess salmon in the following waters of the Snake River:

(a) Snake River from Casey Creek Canyon Road on the Garfield County shore (approximately 6 miles downstream of Lower Granite Dam) to the fishing restriction boundary downstream of Lower Granite Dam.

(b) Snake River from the intersection of Steptoe Canyon Road with Wawawai River Road on the Whitman County shore, upriver approximately 12 miles to the Idaho state line (from the east levee of the Greenbelt boat launch in Clarkston, northwest across the Snake River to the WA/ID boundary marker on the Whitman County shore).

(i) Daily limit of two adult hatchery Chinook and four jack Chinook salmon. Minimum size for Chinook is 12 inches in length.

(ii) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(iii) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(iv) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(v) Night closer is in effect for salmon and sturgeon.

(vi) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900M Exceptions to statewide rules—Snake River. (12-50)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 1, 2012:

WAC 232-28-61900Q Exceptions to statewide rules—Snake River.

WSR 12-11-085 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-88—Filed May 17, 2012, 3:54 p.m., effective May 17, 2012, 3:54 p.m.]

Effective Date of Rule: Immediately.

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

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

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: Reopens the 2012 spring recreational salmon season in the area upstream of Bonneville Dam. Based on the in-season run update from the *U.S. v. Oregon Technical Advisory Committee* (TAC) and catch-balance allocations, hatchery spring chinook remain available for harvest in this area. Regulation is consistent with guidance from the Washington fish and wildlife commission and the department's director, and compact/joint state action of May 17, 2012. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

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

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

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

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

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

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

Date Adopted: May 17, 2012.

Philip Anderson
Director

NEW SECTION

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

1. **Columbia River:**

i. Effective May 19 through May 20, 2012: Open from Tower Island power lines in Bonneville Pool upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines located approximately 6 miles below The Dalles Dam (except for those waters closed under permanent regulations). Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adult Chinook salmon or hatchery steelhead or one of each. Release all wild Chinook. Salmon minimum size is 12 inches.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900I	Exceptions to statewide rules—Columbia River. (12-75)
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WSR 12-11-086

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-89—Filed May 17, 2012, 4:11 p.m., effective May 19, 2012]

Effective Date of Rule: March [May] 19, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: In-season run analysis has predicted that about seven thousand salmon are currently enroute to the Icicle River. Although upper Columbia River spring chinook have been listed as endangered under the Endangered Species Act (ESA), the salmon returning to the Icicle River are a nonendemic stock returning to Leavenworth National Fish Hatchery, and are not listed under the ESA. About one thousand salmon are needed to meet hatchery broodstock. The 2012 return ensures that the hatchery will meet its escapement needs; the remaining fish will be

available for harvest. 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: May 17, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Icicle River (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective May 19 through July 31, 2012, a person may fish for salmon in those waters of the Icicle River from the closure signs located 800 feet upstream of the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Rack. Daily limit, two salmon; minimum size, 12 inches. Night closure in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 1, 2012:

WAC 232-28-61900T Exceptions to statewide
rules—Icicle River (Chelan
Co.)

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Based on the most recent chinook run estimate, the observed catch rates, and projected harvest for the entire Snake River within Washington, the harvest of salmon from the Snake River is projected to reach the number of salmon allocated for harvest within that area. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: May 21, 2012.

Sara G. LaBorde
for Philip Anderson
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective one hour after official sunset on May 22, 2012:

WAC 232-28-61900Q Exceptions to statewide
rules—Snake River. (12-85)

WSR 12-11-099
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-91—Filed May 21, 2012, 3:45 p.m., effective May 22, 2012]

Effective Date of Rule: May 22, 2012, one hour after official sunset.

Purpose: Amend recreational fishing rules.

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

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