

WSR 12-21-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-230—Filed October 3, 2012, 3:34 p.m., effective October 4, 2012, 7:00 p.m.]

Effective Date of Rule: October 4, 2012, 7:00 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 220-33-01000S; and amending WAC 220-33-010.

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

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

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

Reasons for this Finding: Sets additional mainstem fishing periods for the late fall season. Five periods are chinook-directed and occur during evening hours with large-mesh gear. One period is coho-directed and occurs with small-mesh gear during daylight hours. Sturgeon sales/possession is allowed only for the first opener (October 4-5), then is prohibited beginning October 7. Select area sites remain open as scheduled. The seasons are consistent with the 2008-2017 interim management agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 26, and October 2, 2012. 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 fed-

eral 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: October 3, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000T 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: Open Tuesday, Thursday and Sunday evenings from October 4 through October 15, 2012. Open hours are 7 PM until 7 AM

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

c. GEAR: Drift gillnet 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.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001

d. SANCTUARIES: Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two (2) white sturgeon may be possessed or sold by each participating vessel. Sturgeon sales/possession is allowed only for the first opener (October 4-5), then is prohibited beginning October 7.

2. Mainstem Columbia River

a. SEASON: 6 AM until 6 PM Wednesday October 10, 2012

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

c. GEAR: Drift gillnets only. 6" maximum mesh size restriction, unslackened floater gill net. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001. 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: Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon. White sturgeon sales prohibited.

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 in effect. 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 consistent with WAC 220-33-001.

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 POSSESSION: Salmon.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 un-stored 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 consistent with WAC 220-33-001. **Except:** Vessels participating in the Tongue Point fishery may have on-board the vessel an unauthorized net that is not stored only when the un-stored net configurations are consistent with those described above for the South Channel fishing area

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 POSSESSION: Salmon.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 19, 2012. Open 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 consistent with WAC 220-33-001

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 POSSESSION: Salmon

6. 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 effective 7:00 p.m. October 4, 2012:

WAC 220-33-01000S Columbia River season below Bonneville. (12-222)

**WSR 12-21-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-231—Filed October 3, 2012, 3:34 p.m., effective October 3, 2012, 3:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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: Rescinds the scheduled opener for the area from the Wauna powerlines upstream to Bonneville Dam. At the July 26, 2012, compact, the joint states adopted a season which included a retention season during October 20 - December 31. The majority of the catch actually occurred during the summer portion of the season, leaving minimal fish available for the fall portion of the season. This action maintains the closure of sturgeon retention in the area downstream of Bonneville Dam and adjacent tributaries for the remainder of 2012. Ruling continues the white sturgeon retention season in The Dalles Pool. Harvestable fish remain within the guideline for the area. Retention will continue on a days-per-week format through December 31, 2012. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of July 26 and October 2, 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 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 Mak-

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

Date Adopted: October 3, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900P Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619:

(1) Effective immediately through December 31, 2012: It is unlawful to retain white sturgeon caught in those waters of the Columbia River from the mouth upstream to Bonneville Dam, and all adjacent Washington tributaries.

(2) Effective immediately through December 31, 2012 on Thursdays, Fridays and Saturdays:

a. It is permissible to retain legal-size white sturgeon caught in those waters of the Columbia River and tributaries from The Dalles Dam upstream to John Day Dam.

b. Daily possession limit: one white sturgeon.

c. Allowable size limit: 43-54 inches in fork length.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900K Exceptions to statewide rules—Columbia River sturgeon. (12-158)

The following section of the Washington Administrative Code is repealed effective January 1, 2013:

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

**WSR 12-21-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-233—Filed October 5, 2012, 9:01 a.m., effective October 5, 2012, 9:01 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900J, 232-28-61900L and 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: The salmon fishery is approaching allowable limits of incidental impacts to Endangered Species Act listed steelhead under the Permit 1554 which covers the summer chinook and sockeye fisheries. 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 3.

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 5, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—Columbia and Wenatchee rivers. Notwithstanding the provisions of WAC 232-28-619, effective one hour after official sunset on October 7, 2012, until further notice, it is unlawful to fish for or possess salmon in the following waters:

- (1) Columbia River - From Rock Island Dam to Chief Joseph Dam.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-28-61900J Exceptions to statewide rules—Columbia River (12-157)
- WAC 232-28-61900L Exceptions to statewide rules. (12-180)

The following section of the Washington Administrative Code is repealed effective one hour after official sunset on October 7, 2012:

- WAC 2332-28-61900T Exceptions to statewide rules—Wenatchee River. (12-165)

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 2332-28-61900T is probably intended to be WAC 232-28-61900T.

**WSR 12-21-012
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-235—Filed October 5, 2012, 3:24 p.m., effective October 13, 2012, 12:01 p.m.]

Effective Date of Rule: October 13, 2012, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000H; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: October 5, 2012.

Lisa M. Veneroso
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000H Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. October 13 through 11:59 p.m. October 15, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.
2. Effective 12:01 p.m. October 13 through 11:59 p.m. October 18, 2012, razor clam digging is allowed in Razor

Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. October 13 through 11:59 p.m. October 14, 2012, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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 12:01 a.m. October 19, 2012:

WAC 220-56-36000H Razor clams—Areas and seasons.

**WSR 12-21-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-237—Filed October 5, 2012, 5:23 p.m., effective October 7, 2012, 6:00 p.m.]

Effective Date of Rule: October 7, 2012, 6:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Catch and sampling information to date suggests that the chum salmon return is sufficiently in excess of preseason expectation. This action is consistent with the Willapa Bay salmon management plan in that harvest during this management period is coho direct and coho predominate the catch. The vast majority of chum likely to be harvested during this time frame are anticipated to be males. 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: October 5, 2012.

Lisa M. Veneroso
for Philip Anderson
Director

NEW SECTION

WAC 220-40-02700R Salmon—Willapa Bay fall fishery. Notwithstanding the provisions of WAC 220-40-027, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective 6:00 p.m. October 7 through 6:00 p.m. October 13, 2012, it is permissible to retain chum salmon in all areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 13, 2012:

WAC 220-40-02700R Salmon—Willapa Bay fall fishery.

**WSR 12-21-016
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 8, 2012, 9:04 a.m., effective October 8, 2012, 9:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is extending emergency rules (previously filed as WSR 12-13-069) for certain sections of chapter 388-78A WAC that are needed to comply with Initiative Measure 1163. Initiative 1163 requires national fingerprint background checks for long-term care workers hired after January 7, 2012. It is estimated that it may be as long as three weeks and possibly longer before national fingerprint background check results are received. RCW 43.43.837(6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to extend emergency rules that allow boarding homes/assisted living facilities to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings. The department has taken the following steps to adopt the emergency rules as permanent rules: Filed an initial public notice (CR-

101), WSR 12-05-114 on February 22, 2012; shared drafts of the proposed rules with stakeholders; filed the CR-102 on July 23, 2012; and had a public hearing on September 4, 2012. The department has received comments on the proposed rules that will be reviewed and considered. The department needs to extend the emergency rules because they will expire before the permanent rules become effective. WAC 388-78A-24681 and 388-78A-24701 are new sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-2465, 388-78A-2466, 388-78A-2468, and 388-78A-2469.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that 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: Extension of these emergency rules is necessary because the emergency rules will expire before the permanent rules become effective. The rules are necessary for the following reasons: Boarding homes often experience a significant amount of staff turnover. If a new boarding home employee is prevented from having unsupervised access to resident for several weeks, pending the results of the national fingerprint check, boarding homes may experience staffing shortages and the residents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of residents could be jeopardized.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 7, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 1.

Date Adopted: September 26, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2461 Background checks—General. (1) Background checks conducted by the department and required in this chapter include ~~((but are not limited to))~~:

~~((1))~~ (a) Washington state name and date of birth background checks ~~((including: (a) Department and department of health findings)); and (b) ((Criminal background check information from the Washington state patrol and the Washington state courts; (2))~~ After January 1, 2012, a national fingerprint~~((based))~~ background check in accordance with RCW ~~((74.39A.055))~~ 74.39A.056.

~~((3))~~ (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

~~((4))~~ (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW ~~((74.39A.050(8)))~~ 74.39A.-051(8).

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2462 Background checks—~~((Washington state—))~~Who is required to have. (1) Applicants for a boarding home license, as defined in WAC 388-78A-2740, ~~((are required to have a Washington state))~~ must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) For purposes of this section, the administrator is presumed to provide direct care.

(3) For purposes of this section the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009 and chapter 388-112 WAC.

(4) The boarding home must ensure ~~((the following have Washington state))~~ that the administrator and all caregivers employed directly or by contract after January 1, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(5) The boarding home must ensure that the following individuals have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check:

(a) ~~((Caregivers, including))~~ Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) ~~((Administrators;~~

(c) Licensee;

~~((d))~~ Staff persons other than caregivers and administrators;

~~((e))~~ (c) Managers unless they provide direct care to residents; and

~~((f))~~ (d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2464 Background checks—Process. (1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as

a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

~~(2) ((For purposes of this section, the administrator is presumed to provide direct care))~~ After receiving the results of the Washington state name and date of birth background check the boarding home must:

(a) Not allow individuals to have unsupervised access to residents if they have been convicted of a disqualifying crime or finding under WAC 388-78A-2470.

(b) Require individuals listed in WAC 388-78A-2462(2), who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2465 Background check—Results.

~~((1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3))~~ After receiving the results of the background checks, the boarding home must:

~~((a))~~ (1) Inform the person of the results of the background checks;

~~((b))~~ (2) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

~~((c))~~ (3) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2466 Background check—Washington state name and date of birth background check—Valid for two years. A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state name and date of birth background check for all individuals listed in WAC 388-78A-2462.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of ~~((a))~~ the Washington state name and date of birth background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision~~((of the individual,))~~ as defined in RCW 18.20.270, of the individual; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-78A-24681 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check. The boarding home may provisionally employ caregivers and an administrator hired after January 1, 2012 as specified in WAC 388-78A-2462(2) for one hundred and twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2469 Background check—Disclosure statement. (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 to make disclosures~~((of))~~ of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this chapter should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check— National fingerprint checks—Who is required to have.
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WSR 12-21-027
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-232—Filed October 9, 2012, 9:35 a.m., effective October 10, 2012]

Effective Date of Rule: October 10, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 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: In-season updates indicate coho salmon are returning in significantly higher numbers than predicted. Increasing the daily limit will provide additional recreational angling 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: October 9, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Skagit River. Notwithstanding the provisions of WAC 232-28-619, effective October 10 through December 31, 2012, in waters of the Skagit River from the mouth to the Cascade River Road (Marblemount Bridge), salmon daily limit is three, except release chum and Chinook salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2013:

WAC 232-28-61900Q	Exceptions to statewide rules—Skagit River.
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WSR 12-21-028
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-234—Filed October 9, 2012, 10:47 a.m., effective October 13, 2012, 8:00 a.m.]

Effective Date of Rule: October 13, 2012, 8:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-33000K; and amending WAC 220-56-330.

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 rules reopen the recreational crab fishery in the specified marine areas and adjust the open days per week to allow for inclement winter weather. Available harvest shares allow the areas to be opened in this rule. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 9, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-56-33000K Crab—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-330, effective 8:00 a.m. October 13, 2012, through 5:00 p.m. December 31, 2012, a person may fish for crab for personal use seven days a week in Marine Areas 4 east of the Bonilla Tatoosh Line, 5, 6, 7, 8-1, 8-2, 9, 12, and 13.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. December 31, 2012:

WAC 220-56-33000K Crab—Areas and seasons.

WSR 12-21-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-238—Filed October 12, 2012, 8:52 a.m., effective October 12, 2012, 8:52 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-069.

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: Harvest quotas for pink scallops and spiny scallops have not been determined through a treaty and nontreaty harvest management plan. Therefore, the department must prohibit the commercial take of these species in Puget Sound for the time being. 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: October 12, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-06900G Scallop fishery—Puget Sound.

Notwithstanding the provisions of WAC 220-52-069, effective immediately until further notice, it is unlawful to take or possess pink and spiny scallops taken for commercial purposes in all waters of Puget Sound.

WSR 12-21-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-236—Filed October 12, 2012, 12:12 p.m., effective October 16, 2012]

Effective Date of Rule: October 16, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.15.045, 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 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. Higher proportions of naturally produced spawners are expected to improve genetic integrity and stock recruitment of upper Columbia River steelhead through perpetuation of steelhead stocks with the greatest natural-origin lineage. 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: October 12, 2012.

James B. Scott, Jr.
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Columbia, Entiat, Icicle, Methow, Okanogan, Similkameen, and Wenatchee 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) Mandatory retention of adipose fin clipped steelhead, daily limit two (2) hatchery steelhead. Hatchery steelhead are identified by a missing adipose fin with a healed scar in its location.

(2) Selective gear rules are in effect for all steelhead fishery areas, bait is allowed on mainstem Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam. Night closure in effect for all steelhead fishery areas.

(3) Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(4) Release all steelhead with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin.

(5) Motorized vessels are not allowed on the Wenatchee and Icicle Rivers.

(6) Whitefish anglers are reminded that under selective gear rules in the tributaries, bait is prohibited.

(7) Current salmon and all other game fish gear rules do not apply during steelhead season.

(a) Effective October 16, 2012, until further notice, a person may fish for steelhead in the Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam.

(b) Effective October 16, 2012, until further notice, a person may fish for steelhead in the Entiat River upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River to 800 feet downstream of the Entiat National Fish Hatchery outfall.

(c) Effective October 16, 2012, until further notice, a person may fish for steelhead in waters of the Icicle River from the mouth to 500 feet downstream of the Leavenworth National fish Hatchery Barrier Dam.

(d) Effective October 16, 2012, until further notice, a person may fish for steelhead in waters of the Methow River from the mouth to the confluence with the Chewuch River in Winthrop. 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).

(e) Effective October 16, 2012, until further notice, a person may fish for steelhead in the Okanogan River, from the mouth to the Highway 97 Bridge in Oroville.

(f) Effective November 1, 2012, until further notice, a person may fish for steelhead in waters of the Similkameen River from the mouth to 400 feet below Enloe Dam.

(g) Effective October 16, 2012, until further notice, a person may fish for steelhead in waters of the Wenatchee River from the mouth to the Wenatchee River at the Icicle Road Bridge.

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.

WSR 12-21-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-240—Filed October 15, 2012, 3:45 p.m., effective October 15, 2012, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the nonspot shrimp pot fishery season in the remaining open areas of Puget Sound, the beam trawl fishery in Shrimp Management Areas 1 and 3 to protect egg-bearing females as per the shrimp management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 15, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Shrimp beam trawl gear:

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100V Puget Sound shrimp beam trawl fishery—Season. (12-217)

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 31, 2012:

WAC 220-52-05100W Puget Sound shrimp beam trawl fishery—Season.

WSR 12-21-059

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-239—Filed October 16, 2012, 11:12 a.m., effective October 16, 2012, 7:00 p.m.]

Effective Date of Rule: October 16, 2012, 7:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities 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 220-33-01000T and 220-33-01000U; 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: This rule making sets what is likely to be the final three fishing periods of the 2012 fall season. The periods are chinook-directed and occur during evening hours with large-mesh gear. Sturgeon sales/possession are prohibited. Select area sites remain open as scheduled. The seasons are consistent with the 2008-2017 interim management agreement. Salmon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 26, and October 15, 2012. 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 2; Federal Rules or Standards: New 1, Amended 0, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 16, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000U 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: 7 PM Tuesday, October 16, to 7 AM Wednesday, October 17, 2012

7 PM Thursday, October 18 to 7 AM Friday, October 19, 2012

7 PM Sunday, October 21, to 7 AM Monday, October 22, 2012

b. AREA: SMCRA 1A, 1B, 1C, 1D, 1E (Zones 1-5).

c. GEAR: Drift gillnet 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.

Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored consistent with WAC 220-33-001

d. SANCTUARIES: Elokommin-A, Cowlitz River, Kalama-A, Lewis-A, Washougal River and Sandy River.

e. ALLOWABLE POSSESSION: Salmon.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 in effect. 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 fath-

oms. 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 consistent with WAC 220-33-001.

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 POSSESSION: Salmon.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2012. 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 un-stored 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 consistent with WAC 220-33-001. **Except:** Vessels participating in the Tongue Point fishery may have an unauthorized net on board the vessel that is not stored only when the un-stored net configurations are consistent with those described above for the South Channel fishing area

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 POSSESSION: Salmon.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 19, 2012. Open 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 consistent with WAC 220-33-001

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 POSSESSION: 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 effective 7:00 p.m. October 16, 2012:

WAC 220-33-01000T Columbia River season below Bonneville. (12-230)

The following section of the Washington Administrative Code is repealed effective October 27, 2012:

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

ments. The stepped opening periods/areas will also provide for fair-start provisions. There is insufficient time to adopt permanent rules.

Conditions creating a high risk of wildfire that made additional restrictions on WDFW lands necessary are no longer present. Thus, the above-listed emergency rules enacted to safeguard against wildfire risks are now unnecessary. An emergency repeal of these emergency rules is appropriate given the reduced risk of wildfire and the current increased use of these lands for hunting activities.

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 6.

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 16, 2012.

Joe Stohr
for Philip Anderson
Director

**WSR 12-21-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-241—Filed October 16, 2012, 11:20 a.m., effective October 16, 2012, 11:20 a.m.]

Effective Date of Rule: Immediately.

Purpose: Repeal emergency rules adopted for Washington department of fish and wildlife (WDFW) lands due to heightened wildfire danger.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-13-07000A, 232-13-07500A, 232-13-13000A, 232-13-14300A, 232-13-14500A, and 232-13-15500A.

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 agree-

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 232-13-07000A Fires and campfires (12-213)
- WAC 232-13-07500A Smoking (12-213)
- WAC 232-13-13000A Firearms and target practicing (12-213)
- WAC 232-13-14300A Chainsaws and other power equipment (12-213)
- WAC 232-13-14500A Welding or operating an acetylene or other torch with open flame (12-213)
- WAC 232-13-15500A Operating a motor vehicle off developed roadways (12-213)

WSR 12-21-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-242—Filed October 17, 2012, 2:43 p.m., effective October 18, 2012, 7:00 a.m.]

Effective Date of Rule: October 18, 2012, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-47-31100W and 220-47-41100J;
 and amending WAC 220-47-311 and 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: Canada has notified the United States that the inside southern chum abundance is likely to exceed the critical abundance threshold and therefore harvestable chum are available. This regulation modifies fishing schedules for Salmon Management and Catch Reporting Areas 7 and 7A per agreement with tribal comanagers. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 17, 2012.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-47-31100W Purse seines—Open periods. Notwithstanding the provisions of WAC 220-47-311, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with purse seine gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A, except open from 7 A.M. to 6 P.M. on October 18, 2012.

NEW SECTION

WAC 220-47-41100J Gill nets—Open periods Notwithstanding the provisions of WAC 220-47-411, it is unlaw-

ful to take, fish for, or possess salmon taken for commercial purposes with gill net gear in waters of Puget Sound Management and Catch Reporting Areas 7 and 7A, except open from 7 A.M. through 11:59 p.m. on October 18, 2012.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 18, 2012:

WAC 220-47-31100W Purse seines—Open periods.

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 19, 2012:

WAC 220-47-41100J Gill nets—Open periods.

WSR 12-21-068
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 17, 2012, 5:47 p.m., effective October 17, 2012, 5:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: To implement and clarify the training and the criminal history background check requirements as directed in chapter 74.39A RCW. Permanent implementation has been delayed due to WAC language updates made as a result of ESHB 2314, and continued public comment during the implementation of training and criminal history background check requirements as directed in chapter 74.39A RCW. This emergency filing supersedes the emergency rule filed as WSR 12-13-090, which expires October 17. The department received several comments during the public comment period and public hearing held September 25, 2012. In order to thoughtfully review the comments and make necessary changes, the department is filing this extension.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0080, 388-112-0085, 388-112-0090, 388-112-0095, 388-112-0105, 388-112-0230, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, and 388-112-0375; and amending WAC 388-71-0500, 388-71-

0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, Washington state 2009-11 budget (ESHB 2314).

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: Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. Initiative 1163, enacted by the people in November 2011, required implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). Permanent rule making has been delayed and subsequent emergency filing is necessary.

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 86, Amended 63, Repealed 77.

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 86, Amended 63, Repealed 77.

Date Adopted: October 17, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-23 issue of the Register.

WSR 12-21-080

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-243—Filed October 19, 2012, 2:30 p.m., effective October 19, 2012, 2:30 p.m.]

Effective Date of Rule: Immediately.

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: Steelhead fisheries for hatchery steelhead have recently opened in the upper Columbia and tributaries, thus allowing early retention of adipose clip only steelhead in the lower Hanford Reach. Early retention will provide additional recreational angling 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: October 19, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2012, a person may fish for steelhead in waters of the Columbia River from the Highway 395 Bridge upstream to the Old Hanford townsite wooden powerline towers. Daily limit, two hatchery steelhead; minimum size is 20 inches in length.

REPEALER

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

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

**WSR 12-21-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-246—Filed October 19, 2012, 2:34 p.m., effective October 19, 2012, 2:34 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-36-02300L; and amending WAC 220-36-023.

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 action is consistent with the outcome of discussions through the 2012 North of Falcon/Pacific Fisheries Management Council season setting process and is reflected in the Grays Harbor planning model. This emergency rule corrects an error in the permanent rules. 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: October 19, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-36-02300L Salmon—Grays Harbor fall fishery. Notwithstanding the provisions of WAC 220-36-023, effective immediately in waters of Grays Harbor, mesh

size must not exceed six and one-half inch maximum. Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 22, 2012:

WAC 220-36-02300L Salmon—Grays Harbor fall fishery.

**WSR 12-21-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-244—Filed October 19, 2012, 4:38 p.m., effective October 19, 2012, 4:38 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend elk hunting rules described in WAC 232-28-360.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-36000B; and amending WAC 232-28-360.

Statutory Authority for Adoption: RCW 77.04.020 and 77.12.047.

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: With regard to the Green River, Toutle, and Margaret modern firearm special permit hunts, the hunt dates originally adopted in the WAC would have resulted in overlaps between archers and modern firearm hunters or were outside of the timeframe desired by the landowners who provide recreational access to hunters. Corrections to the dates were provided to the public via alternate means (agency web site). These corrections will help to avoid confusion for the more than 60,000 Washington citizens who take part in the special permit application process.

The hunt dates for the quality, modern firearm, Quinault hunt were changed from September 16 through September 20, 2012, as originally filed in the notice of proposed rule making (CR-102) dated February 1, 2012, to September 24 through September 28, 2012, at the April 13-14, 2012, fish and wildlife commission meeting. However, due to an oversight, this date change was not included in the permanent rule-making order. This emergency change revises the WAC to make it consistent with hunt dates adopted by the fish and wildlife commission.

Due to limited access caused by fires across much of the state, once in a lifetime permit hunts and hunts designed for population management were impacted by access restrictions. Therefore, we are extending the hunting opportunity for those hunters. These extensions provide a service to permit holders who would have otherwise lost the hunting

opportunity provided by these permits. Immediate rule action is necessary to provide that opportunity.

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 19, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-36000C 2012 Elk special permits. Notwithstanding the provisions of WAC 232-28-360, effective immediately until further notice:

Under the Quality elk section, Peaches Ridge modern firearm (EF) hunt, Sept. 24-28, 2012, the additional time period of Oct. 22-Nov. 4, 2012 is added.

Under the Quality elk section, Satsop modern firearm (WF) hunt, Oct. 8-12, 2012, the additional time period of Dec. 16-31 added.

Under the Quality elk section, Wynoochee modern firearm (WF) hunt, Oct. 8-12, 2012, the additional time period of Dec. 16-31 is added.

Under the Quality elk section, the dates for the Green River modern firearm (WF) hunt is changed from Nov. 12-18 to Oct. 27-Nov. 2.

Under the Quality elk section, the dates for the Toutle modern firearm (WF) hunt is changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-28 and Nov. 3-14.

Under the Quality elk section, the dates for the Quinault modern firearm (WF) hunt is changed from Sept. 16-20 to Sept. 24-28.

Under the Bulls section, the dates for the Margaret modern firearm (WF) hunt with 4 permits is changed from Sept. 17-30 and Nov. 3-14 to Sept. 24-30 and Nov. 3-14.

Under the Bulls elk section, Margaret, muzzleloader (WM) hunt, Oct. 6-12, 2012, the additional time period of Dec. 17-31, 2012 is added.

Under the Bulls elk section, Skokomish muzzleloader (WM) hunt, Oct. 6-12, 2012, the additional time period of Dec. 16-31, 2012 is added.

Under the Antlerless elk section, Winston, muzzleloader (WM) hunt, Oct. 6-12, 2012, the additional time period of Dec. 17-31, 2012 is added.

Under the Antlerless elk section, Margaret, muzzleloader (WM) hunt, Oct. 6-12, 2012, the additional time period of Dec. 17-31, 2012 is added.

Under the Antlerless elk section, Ryderwood, muzzleloader (WM) hunt, Oct. 6-12, 2012, the additional time period of Dec. 17-31, 2012 is added.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-36000B 2012 Elk special permits.

**WSR 12-21-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-248—Filed October 22, 2012, 2:20 p.m., effective October 22, 2012, 2:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300B; 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 2012-2013 harvest management period from those listed in the permanent sea urchin regulation. 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: October 22, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

(1) Green sea urchins: Sea Urchin Districts 1 and 2 are open Sunday through Friday of each week. Sea Urchin Districts 3, 4, 6 and 7 are open Monday through Friday of each week.

(2) Red sea urchins: Sea Urchin Districts 1, 2 and 4, are open Monday through Friday of each 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 is 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 and green sea urchins harvested in Sea Urchin Districts 1 and 2 must be landed within Sea Urchin Districts 1 and 2.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300B Sea urchins. (12-219)

**WSR 12-21-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-249—Filed October 22, 2012, 2:20 p.m., effective October 22, 2012, 2:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100U; 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 sea cucumber districts listed. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 22, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-07100V 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 through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 on Monday through Friday of each week.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100U Sea cucumbers. (12-219)

**WSR 12-21-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-250—Filed October 22, 2012, 4:50 p.m., effective October 22, 2012, 4:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100K; 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 are available for a commercial gillnet fishery in Salmon Management and Catch Reporting Area 6D. 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: October 22, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-47-41100K Gillnet—Open periods. 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 gillnet gear in those waters of Puget Sound Salmon Management and Catch Reporting Area 6D, except as follows:

(1) Area 6D - Open for skiff gillnets 7 AM to 7 PM daily, Tuesday, October 23 through Friday, October 26. All Chinook and chum must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 pm October 26, 2012:

WAC 220-47-41100K Gillnet—Open periods.

WSR 12-21-101

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 12-251—Filed October 23, 2012, 10:02 a.m., effective October 23, 2012, 10:02 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-30700H; and amending WAC 220-47-307.

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: A purse seine closure of a portion of Salmon Management and Catch Reporting Area 12 is necessary per agreement with tribes regarding Hood Canal fall chum management and in-season run-size updates. 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: October 23, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-47-30700H Closed areas—Puget Sound salmon. Notwithstanding the provisions of WAC 220-47-307, effective October 25 and October 29, 2012, it is unlawful to take, fish for, or possess salmon taken for commercial purposes with purse seine gear in that portion of Puget Sound Salmon Management and Catch Reporting Area 12 north and east of a line from 47° 50' 20"N and 122° 37' 16"W, projected across the canal to a point at 47° 51' 22"N and 122° 39' 7"W, then projected true north to the shoreline.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 30, 2012:

WAC 220-47-30700H Closed areas—Puget Sound salmon.

**WSR 12-21-107
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-247—Filed October 23, 2012, 12:01 p.m., effective October 27, 2012, 12:01 p.m.]

Effective Date of Rule: October 27, 2012, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000I; and amending WAC 220-56-360.

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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. 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: October 23, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000I Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it

is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. October 27 through 11:59 p.m. October 28, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. October 27 through 11:59 p.m. October 30, 2012, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. October 27 through 11:59 p.m. October 28, 2012, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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 12:01 a.m. October 31, 2012:

WAC 220-56-36000I Razor clams—Areas and seasons.

**WSR 12-21-114
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-245—Filed October 23, 2012, 3:33 p.m., effective October 23, 2012, 3:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend deer hunting rules described in WAC 232-28-359.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-35900B; and amending WAC 232-28-359.

Statutory Authority for Adoption: RCW 77.12.047.

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: Due to limited access caused by fires across much of the state, once in a lifetime permit hunts and hunts designed for population management were impacted by access restrictions. Therefore, we are extending the hunting opportunity for those hunters. These extensions provide a service to permit holders who would have otherwise lost the hunting opportunity provided by these permits.

Immediate rule action is necessary to provide that opportunity.

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 23, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-35900C 2012 Deer special permits. Notwithstanding the provisions of WAC 232-28-359, effective immediately until further notice:

Under the Antlerless deer section, for the Coweeman muzzleloader, Sept. 29-Oct. 7, 2012, add an additional hunt timeframe of Nov. 22-Dec. 15, 2012.

Under the Second Deer section, for the Mission muzzleloader, Sept. 29-Oct. 7, 2012, add an additional hunt timeframe of Nov. 25-30, 2012.

Under the Youth deer section, for the Skookumchuck modern firearm, Any buck hunt, the season for October has ended, but an additional hunt timeframe of Nov. 1-23, 2012, is added.

Under the Disabled deer section, for the Mission muzzleloader, Sept. 29-Oct. 7, 2012, add an additional hunt timeframe of Nov. 25-30, 2012.

Under the Disabled deer section, for the North River muzzleloader, Sept. 29-Oct. 7, 2012, add an additional hunt timeframe of Nov. 22-Dec. 15, 2012.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-35900B 2012 Deer special permits.

**WSR 12-21-128
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 24, 2012, 9:40 a.m., effective October 24, 2012, 9:40 a.m.]

Effective Date of Rule: Immediately.

Purpose: Chapter 392-124 WAC requires updating to address the following:

- Allow for state agencies to operate the National Guard youth challenge program, and report enrollment and receive apportionment directly from the office of superintendent of public instruction.
- Adjust the annual average full-time equivalency and headcount averaging calculation due to the new June enrollment reporting requirement.

Citation of Existing Rules Affected by this Order: Amending chapter 392-124 WAC, National Guard youth challenge apportionment.

Statutory Authority for Adoption: RCW 28A.150.290.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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: Chapter 392-124 WAC requires updating to align with current requirements in passed legislations.

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 6, Repealed 0.

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

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

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

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

Date Adopted: October 24, 2012.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-010 Purpose. The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts or state agencies for the National Guard youth challenge program authorized by RCW 28A.150.310.

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-040 Definition—Form P-223YC. "Form P-223YC" means the report of (~~school district~~) enrollment for students enrolled in a National Guard youth challenge program submitted monthly by the hosting school

district(s) or state agency to the superintendent of public instruction for the school year for the purpose of calculating the program allocations.

~~((+))~~ The count dates for the National Guard youth challenge program shall be:

~~((a))~~ (1) The fourth day of school in the months of January and July, or the start of the term of the educational program; and

~~((b))~~ (2) The first day of school in the months of February through June and the months of August through December.

~~((2) This report shall indicate the enrollment by resident school district and serving school district.)~~

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-060 Definition—Annual average full-time equivalency. For the purposes of this chapter, annual average full-time equivalency shall be calculated by taking the annual total of full-time equivalent students enrolled on the twelve count dates of the school year and reported to the superintendent of public instruction Form P-223YC for the months of September through August divided by ~~((nine))~~ ten. This calculation applies to the reporting of basic education and vocational students.

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-080 Definition—Annual average headcount. For the purposes of this chapter, annual average headcount shall be calculated by taking the ~~((sum))~~ annual total of the monthly headcounts as reported on Form P-223YC for the months of September through August divided by ~~((twelve))~~ ten. This calculation applies to the reporting of basic education, special education, and bilingual education students.

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-100 Definition—Apportionment. Apportionment shall be paid to the school district or state agency operating the National Guard youth challenge program ~~((is operating within))~~ pursuant to chapter 28A.510 RCW.

AMENDATORY SECTION (Amending WSR 09-21-020, filed 10/9/09, effective 11/9/09)

WAC 392-124-110 Definition—Apportionment allocation. The apportionment allocation shall be based and made consistent with state funding formulas with the following items set as:

(1) The basic education funding rate shall be the basic state average rate as defined in WAC 392-124-030.

(2) The vocational education funding rate shall be the vocational state average rate as defined in WAC 392-124-030.

(3) The special education rate shall be 93.09% of the basic state average rate as defined in WAC 392-124-030 with the number of funded special education headcount limited to 12.7% of the reported basic education headcount.

(4) Funding under the following categorical programs shall use the legislative provided formulas and rates. Categorical programs are subject to legislative allotment and program standards and include:

(a) Highly capable;

(b) Bilingual;

(c) Learning assistance - Shall use the statewide average for the free and reduced price lunch rate(;

~~(d) Student achievement).~~

(5) Funding for categorical programs and vocational education is subject to program approval by the superintendent of public instruction.

WSR 12-21-134
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)

[Filed October 24, 2012, 10:11 a.m., effective October 24, 2012, 10:11 a.m.]

Effective Date of Rule: Immediately.

Purpose: To adjust the rate table in accordance with the supplemental budget effective May 2, 2012. This emergency rule will replace and supersede WSR 12-14-061. A CR-101 has been filed, WSR 12-10-090. Additionally, an internal and external draft review has been completed and a CR-102 has been submitted to the rules and policies assistance unit (RPAU).

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.050 (3)(a).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal 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 supplemental budget, effective May 2, 2012, makes changes to the assisted living facility and adult family home rates. The training rate add-on authorized in the supplemental budget is being adjusted to an ongoing rate. This emergency rule will replace and supersede WSR 12-14-061. A CR-101 has been filed, WSR 12-10-090. Additionally, an internal and external draft review has been completed and a CR-102 has been submitted to RPAU.

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: October 22, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-02-050, filed 12/30/11, effective 1/30/12)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and (~~boarding homes~~) assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((66.52))	\$((71.94))	\$((47.06))	\$((47.06))	\$((46.61))
	<u>65.58</u>	<u>71.00</u>	<u>46.51</u>	<u>46.51</u>	<u>47.45</u>
A Med	\$((72.02))	\$((77.44))	\$((53.39))	\$((53.39))	\$((52.86))
	<u>70.97</u>	<u>76.39</u>	<u>52.71</u>	<u>52.71</u>	<u>53.70</u>
A High	\$((80.81))	\$((86.23))	\$((58.63))	\$((58.63))	\$((59.12))
	<u>79.58</u>	<u>85.00</u>	<u>57.85</u>	<u>57.85</u>	<u>59.96</u>
B Low	\$((66.52))	\$((71.94))	\$((47.06))	\$((47.06))	\$((46.84))
	<u>65.58</u>	<u>71.00</u>	<u>46.51</u>	<u>46.51</u>	<u>47.68</u>
B Med	\$((74.22))	\$((79.64))	\$((59.72))	\$((59.72))	\$((59.41))
	<u>73.13</u>	<u>78.55</u>	<u>58.92</u>	<u>58.92</u>	<u>60.25</u>
B Med-High	\$((84.05))	\$((89.47))	\$((63.50))	\$((63.50))	\$((63.64))
	<u>82.76</u>	<u>88.18</u>	<u>62.62</u>	<u>62.62</u>	<u>64.48</u>
B High	\$((88.48))	\$((93.90))	\$((72.58))	\$((72.58))	\$((72.73))
	<u>87.10</u>	<u>92.52</u>	<u>71.52</u>	<u>71.52</u>	<u>73.57</u>
C Low	\$((72.02))	\$((77.44))	\$((53.39))	\$((53.39))	\$((52.86))
	<u>70.97</u>	<u>76.39</u>	<u>52.71</u>	<u>52.71</u>	<u>53.70</u>
C Med	\$((80.81))	\$((86.23))	\$((67.00))	\$((67.00))	\$((67.44))
	<u>79.58</u>	<u>85.00</u>	<u>66.05</u>	<u>66.05</u>	<u>68.28</u>
C Med-High	\$((100.58))	\$((106.00))	\$((89.29))	\$((89.29))	\$((88.28))
	<u>98.96</u>	<u>104.38</u>	<u>87.89</u>	<u>87.89</u>	<u>89.12</u>
C High	\$((101.58))	\$((107.00))	\$((90.14))	\$((90.14))	\$((89.51))
	<u>99.94</u>	<u>105.36</u>	<u>88.73</u>	<u>88.73</u>	<u>90.35</u>
D Low	\$((74.22))	\$((79.64))	\$((72.14))	\$((72.14))	\$((68.74))
	<u>73.13</u>	<u>78.55</u>	<u>71.09</u>	<u>71.09</u>	<u>69.58</u>
D Med	\$((82.46))	\$((87.88))	\$((83.57))	\$((83.57))	\$((84.09))
	<u>81.20</u>	<u>86.62</u>	<u>82.29</u>	<u>82.29</u>	<u>84.93</u>
D Med-High	\$((106.61))	\$((112.03))	\$((106.26))	\$((106.26))	\$((101.14))
	<u>104.87</u>	<u>110.29</u>	<u>104.52</u>	<u>104.52</u>	<u>101.98</u>
D High	\$((114.88))	\$((120.30))	\$((114.88))	\$((114.88))	\$((115.12))
	<u>112.97</u>	<u>118.39</u>	<u>112.97</u>	<u>112.97</u>	<u>115.96</u>

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
E Med	\$((138.82)) <u>136.43</u>	\$((144.24)) <u>141.85</u>	\$((138.82)) <u>136.43</u>	\$((138.82)) <u>136.43</u>	\$((139.06)) <u>139.90</u>
E High	\$((162.76)) <u>159.89</u>	\$((168.18)) <u>165.31</u>	\$((162.76)) <u>159.89</u>	\$((162.76)) <u>159.89</u>	\$((163.01)) <u>163.85</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((61.02)) <u>60.19</u>	\$((65.94)) <u>65.11</u>	\$((47.06)) <u>46.51</u>	\$((47.06)) <u>46.51</u>	\$((46.61)) <u>47.45</u>
A Med	\$((64.33)) <u>63.43</u>	\$((69.25)) <u>68.35</u>	\$((51.28)) <u>50.64</u>	\$((51.28)) <u>50.64</u>	\$((50.77)) <u>51.61</u>
A High	\$((78.61)) <u>77.43</u>	\$((83.53)) <u>82.35</u>	\$((55.91)) <u>55.18</u>	\$((55.91)) <u>55.18</u>	\$((55.98)) <u>56.82</u>
B Low	\$((61.02)) <u>60.19</u>	\$((65.94)) <u>65.11</u>	\$((47.06)) <u>46.51</u>	\$((47.06)) <u>46.51</u>	\$((46.84)) <u>47.68</u>
B Med	\$((69.81)) <u>68.80</u>	\$((74.73)) <u>73.72</u>	\$((56.56)) <u>55.82</u>	\$((56.56)) <u>55.82</u>	\$((56.26)) <u>57.10</u>
B Med-High	\$((79.07)) <u>77.88</u>	\$((83.99)) <u>82.80</u>	\$((60.14)) <u>59.33</u>	\$((60.14)) <u>59.33</u>	\$((60.32)) <u>61.16</u>
B High	\$((86.29)) <u>84.95</u>	\$((91.21)) <u>89.87</u>	\$((70.53)) <u>69.51</u>	\$((70.53)) <u>69.51</u>	\$((70.68)) <u>71.52</u>
C Low	\$((64.33)) <u>63.43</u>	\$((69.25)) <u>68.35</u>	\$((51.49)) <u>50.85</u>	\$((51.49)) <u>50.85</u>	\$((51.15)) <u>51.99</u>
C Med	\$((78.61)) <u>77.43</u>	\$((83.53)) <u>82.35</u>	\$((66.14)) <u>65.21</u>	\$((66.14)) <u>65.21</u>	\$((65.80)) <u>66.64</u>
C Med-High	\$((97.27)) <u>95.71</u>	\$((102.19)) <u>100.63</u>	\$((82.96)) <u>81.69</u>	\$((82.96)) <u>81.69</u>	\$((82.04)) <u>82.88</u>
C High	\$((98.24)) <u>96.67</u>	\$((103.16)) <u>101.59</u>	\$((88.24)) <u>86.87</u>	\$((88.24)) <u>86.87</u>	\$((87.03)) <u>87.87</u>
D Low	\$((69.81)) <u>68.80</u>	\$((74.73)) <u>73.72</u>	\$((71.15)) <u>70.12</u>	\$((71.15)) <u>70.12</u>	\$((67.23)) <u>68.07</u>
D Med	\$((80.21)) <u>79.00</u>	\$((85.13)) <u>83.92</u>	\$((81.90)) <u>80.65</u>	\$((81.90)) <u>80.65</u>	\$((81.83)) <u>82.67</u>
D Med-High	\$((103.11)) <u>101.44</u>	\$((108.03)) <u>106.36</u>	\$((103.63)) <u>101.95</u>	\$((103.63)) <u>101.95</u>	\$((98.06)) <u>98.90</u>
D High	\$((111.72)) <u>109.88</u>	\$((116.64)) <u>114.80</u>	\$((111.72)) <u>109.88</u>	\$((111.72)) <u>109.88</u>	\$((111.38)) <u>112.22</u>
E Med	\$((134.51)) <u>132.21</u>	\$((139.43)) <u>137.13</u>	\$((134.51)) <u>132.21</u>	\$((134.51)) <u>132.21</u>	\$((134.17)) <u>135.01</u>
E High	\$((157.30)) <u>154.54</u>	\$((162.22)) <u>159.46</u>	\$((157.30)) <u>154.54</u>	\$((157.30)) <u>154.54</u>	\$((156.96)) <u>157.80</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE

NONMETROPOLITAN COUNTIES**

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.94)) <u>59.13</u>	\$((65.18)) <u>64.37</u>	\$((47.06)) <u>46.51</u>	\$((47.06)) <u>46.51</u>	\$((46.61)) <u>47.45</u>
A Med	\$((64.33)) <u>63.43</u>	\$((69.57)) <u>68.67</u>	\$((50.23)) <u>49.62</u>	\$((50.23)) <u>49.62</u>	\$((49.74)) <u>50.58</u>
A High	\$((78.61)) <u>77.43</u>	\$((83.85)) <u>82.67</u>	\$((55.04)) <u>54.30</u>	\$((55.04)) <u>54.30</u>	\$((54.95)) <u>55.79</u>
B Low	\$((59.94)) <u>59.13</u>	\$((65.18)) <u>64.37</u>	\$((47.06)) <u>46.51</u>	\$((47.06)) <u>46.51</u>	\$((46.84)) <u>47.68</u>
B Med	\$((69.81)) <u>68.80</u>	\$((75.05)) <u>74.04</u>	\$((55.51)) <u>54.79</u>	\$((55.51)) <u>54.79</u>	\$((55.22)) <u>56.06</u>
B Med-High	\$((79.07)) <u>77.88</u>	\$((84.31)) <u>83.12</u>	\$((59.01)) <u>58.22</u>	\$((59.01)) <u>58.22</u>	\$((59.14)) <u>59.98</u>
B High	\$((86.29)) <u>84.95</u>	\$((91.53)) <u>90.19</u>	\$((66.71)) <u>65.77</u>	\$((66.71)) <u>65.77</u>	\$((66.86)) <u>67.70</u>
C Low	\$((64.33)) <u>63.43</u>	\$((69.57)) <u>68.67</u>	\$((50.23)) <u>49.62</u>	\$((50.23)) <u>49.62</u>	\$((49.74)) <u>50.58</u>
C Med	\$((78.61)) <u>77.43</u>	\$((83.85)) <u>82.67</u>	\$((62.52)) <u>61.66</u>	\$((62.52)) <u>61.66</u>	\$((63.29)) <u>64.13</u>
C Med-High	\$((97.27)) <u>95.71</u>	\$((102.51)) <u>100.95</u>	\$((79.79)) <u>78.58</u>	\$((79.79)) <u>78.58</u>	\$((78.92)) <u>79.76</u>
C High	\$((98.24)) <u>96.67</u>	\$((103.48)) <u>101.91</u>	\$((83.41)) <u>82.13</u>	\$((83.41)) <u>82.13</u>	\$((82.32)) <u>83.16</u>
D Low	\$((69.81)) <u>68.80</u>	\$((75.05)) <u>74.04</u>	\$((67.26)) <u>66.30</u>	\$((67.26)) <u>66.30</u>	\$((63.59)) <u>64.43</u>
D Med	\$((80.21)) <u>79.00</u>	\$((85.45)) <u>84.24</u>	\$((77.42)) <u>76.26</u>	\$((77.42)) <u>76.26</u>	\$((77.39)) <u>78.23</u>
D Med-High	\$((103.11)) <u>101.44</u>	\$((108.35)) <u>106.68</u>	\$((97.95)) <u>96.38</u>	\$((97.95)) <u>96.38</u>	\$((92.74)) <u>93.58</u>
D High	\$((105.60)) <u>103.88</u>	\$((110.84)) <u>109.12</u>	\$((105.60)) <u>103.88</u>	\$((105.60)) <u>103.88</u>	\$((105.32)) <u>106.16</u>
E Med	\$((127.14)) <u>124.99</u>	\$((132.38)) <u>130.23</u>	\$((127.14)) <u>124.99</u>	\$((127.14)) <u>124.99</u>	\$((126.86)) <u>127.70</u>
E High	\$((148.68)) <u>146.10</u>	\$((153.92)) <u>151.34</u>	\$((148.68)) <u>146.10</u>	\$((148.68)) <u>146.10</u>	\$((148.41)) <u>149.25</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.