

WSR 08-20-082
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2008, 8:47 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The division of child support (DCS) is adopting new and amended sections of chapter 388-14A WAC to implement state legislation that implements the federal Deficit Reduction Act of 2005 (DRA). These new and amended WAC sections will implement RCW 26.23.035 and 74.20.330. These statutes will affect the public assistance assignment and the rules concerning the distribution of child support collections. These changes will take effect on October 1, 2008. The overall effect of these rules will be to direct more money to families.

DCS has already filed the preproposal statement of inquiry to start the regular rule-making process for these rules (WSR 08-06-089). The draft rules will soon go out for review, and DCS plans to file the CR-102, notice of proposed rule making, as soon as the review is over. We anticipate filing the CR-102 in early October 2008. These emergency rules are necessary until the regular rule-making process is completed.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2037 What are permanently assigned arrears?, 388-14A-2038 What are temporarily assigned arrears?, 388-14A-5000 (~~How does the division of child support distribute support payments?~~) What is the difference between distribution and disbursement of child support collections?, 388-14A-5001 What procedures does DCS follow to distribute support (~~payments~~) collections?, 388-14A-5002 How does DCS distribute support (~~money~~) collections in a nonassistance case?, 388-14A-5003 How does DCS distribute (~~money~~) support collections in an assistance case?, 388-14A-5004 How does DCS distribute (~~money~~) support collections in a former assistance case?, 388-14A-5005 How does DCS distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections?, 388-14A-5006 How does DCS distribute support (~~money~~) collections when the paying parent has more than one case?, 388-14A-5010 How does the division of child support (~~handle~~) distribute (~~intercepted~~) federal (~~income~~) tax refund(~~s~~) offset collections from (~~a~~) joint returns?, and 388-14A-5100 (~~What kind of distribution notice does the division of child support send?~~) How does the division of child support notify the custodial parent about support collections?; and new sections WAC 388-14A-2039 What are conditionally assigned arrears? and 388-14A-5015 What is a pass-through payment?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-2036, 388-14A-2037, 388-14A-2038, 388-14A-5000, 388-14A-5001, 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005, 388-14A-5006, 388-14A-5010, and 388-14A-5100.

Statutory Authority for Adoption: RCW 26.23.035 and 74.20.330.

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: DCS must have these rules in effect under RCW 26.23.035 and 74.20.330, which implement the federal DRA, in order to remain in compliance with its state plan under Title IV-D of the federal Social Security Act. DCS must be able to implement these federal and state statutes by October 1, 2008, or risk loss of federal funds for noncompliance.

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 13, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 13, Repealed 0.

Date Adopted: September 18, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"**Agency**" means the Title IV-D provider of a state. In Washington, this is DCS.

"**Agreed settlement**" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"**Aid**" or "**public assistance**" means cash assistance under the temporary assistance for needy families (TANF) program, the aid ~~((for))~~ to families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"**Alternate recipient**" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"**Annual fee**" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"**Applicant/custodian**" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"**Applicant/recipient**," "**applicant**," and "**recipient**" means a person who receives public assistance on behalf of a child or children residing in their household.

"**Arrears**" means the debt amount owed for a period of time before the current month.

"**Assistance**" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"**Assistance unit**" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"**Birth costs**" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"**Conditionally assigned arrears**" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"**Conference board**" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"**Consent order**" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"**Court order**" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"**Current support**" or "**current and future support**" means the amount of child support which is owed for each month.

"**Custodial parent or CP**" means the person, whether a parent or not, with whom a dependent child resides the

majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"**Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought**" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"**Delinquency**" means failure to pay current child support when due.

"**Department**" means the Washington state department of social and health services (DSHS).

"**Dependent child**" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"**Disbursement**" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"**Disposable earnings**" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"**Distribution**" means how a collection is allocated or split within a case or among multiple cases.

"**Earnings**" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"**Employee**" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"**Employer**" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"**Employment**" means personal services of whatever nature, including service in interstate commerce, performed

for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means:

- Medical costs incurred on behalf of a child, which include:
 - Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
 - Prescribed medical equipment and prescribed pharmacy products;
 - Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
 - Dental and optometrical costs incurred on behalf of a child; and
 - Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means either or both:

- (1) Medical expenses; and
- (2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or **"NMSN"** is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned ((~~arrearages~~) arrears)" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"**Support enforcement services**" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"**Support establishment notice**" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"**Support money**" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"**Support obligation**" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

~~("TANF" means the temporary assistance for needy families (TANF) program.)~~

"**Temporarily assigned ((arrearages)) arrears**" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"**Title IV-A**" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"**Title IV-A agency**" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"**Title IV-D**" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"**Title IV-D agency**" or "**IV-D agency**" means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"**Title IV-D case**" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"**Title IV-D plan**" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"**Title IV-E**" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"**Title IV-E case**" means a foster care case.

"**Tribal TANF**" means a temporary assistance for needy families (TANF) program run by a tribe.

"**Tribunal**" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"**Uninsured medical expenses**":

(1) For the purpose of enforcing support obligations under RCW 26.23.110, means

(a) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(b) Copayments, or deductibles incurred on behalf of a child; and

(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

(b) The premium for covering the child exceeds the maximum limit provided in the support order.

"**Unreimbursed assistance**" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"**Unreimbursed medical expenses**" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"**We**" means the division of child support, part of the department of social and health services of the state of Washington.

"**WSSR**" is the Washington state support registry.

"**You**" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3)(c):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, ((all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family)) support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assign to the state all rights to support which accrued before the application date and which will accrue prior to the date your family terminates from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assign to the state all rights to support which accrue while your family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminates from assistance, whichever date is later. After this date, if any remaining arrears are collected by federal ((~~income~~)) tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assign to the state all rights to support which accrue while the family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until the date your family terminates from assistance. After this date, if any remaining arrears are collected by federal ((~~income~~)) tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2037 What are permanently assigned arrears? Permanently assigned arrears accrue only under the following conditions:

(1) For those periods prior to the family receiving assistance, for assistance applications dated ((~~on or~~)) before ((~~September 30, 1997~~)) October 1, 1997; and

(2) For those periods while a family receives assistance, for assistance applications dated at any time.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2038 What are temporarily assigned arrears? (1) Temporarily assigned arrears are(:

(1) Not permanently assigned to the state; or

(2) Collected and retained by the state up to the amount of unreimbursed assistance, if these arrears are collected by federal income tax refund offset at any time; and

(3) Collected and kept by the state, up to the cumulative amount of unreimbursed assistance:

(a) Until October 1, 2000 or until the date the family terminates from assistance, whichever date is later; or

(b) Only while the family receives assistance, for assistance periods beginning October 1, 2000 or later)) arrears owed to the family at the time TANF started, for TANF periods beginning before October 1, 2008. These arrears remain temporarily assigned during the assistance period.

(2) Temporarily assigned arrears convert to conditionally assigned arrears when the TANF period ends. See WAC

388-14A-2039 for a description of conditionally assigned arrears.

(3) If any support collections are distributed to temporarily assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

NEW SECTION

WAC 388-14A-2039 What are conditionally assigned arrears? (1) Conditionally assigned arrears are any temporarily assigned arrears that remain on a case after the family stops receiving TANF.

(2) These arrears remain conditionally assigned during TANF periods beginning on or after October 1, 2008.

(3) If federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are retained by the state, up to the amount of unreimbursed assistance.

(4) If support collections other than federal tax refund offset collections are distributed to conditionally assigned arrears, those collections are disbursed to the family.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5000 ((~~How does the division of child support distribute support payments~~)) What is the difference between distribution and disbursement of child support collections? (1) ((~~Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:~~

(a) ~~Department when the department provides or has provided public assistance payments for the support of the family;~~

(b) ~~Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;~~

(c) ~~Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;~~

(d) ~~Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services;~~

(e) ~~Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information)) Distribution of child support collections refers to how the division of child support (DCS) applies or allocates collections within a child support case or between child support cases.~~

(2) ((~~DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noneustodial parent (NCP)) Disbursement of child support collections refers to how DCS sends out or pays support collections to the appropriate recipient.~~

(3) ((~~If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act)) WAC 388-14A-5001~~

through 388-14A-5015 explain how DCS distributes and disburses child support collections.

~~((4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.~~

~~(5) DCS changes the distribution rules based on changes in federal statutes and regulations.~~

~~(6) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).))~~

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5001 What procedures does DCS follow to distribute support ((payments)) collections? (1) When distributing support ((money)) collections, the division of child support (DCS) ~~((does the following):~~

~~(1) Records payments)) records collections~~ in exact amounts of dollars and cents(±).

(2) DCS distributes support ((money)) collections within two days of the date DCS receives the ((money)) collection, unless DCS is unable to distribute the ((payment)) collection for one or more of the following reasons:

(a) The location of the payee is unknown;

(b) DCS does not have sufficient information to identify the accounts against which or to which it should ((apply)) distribute the money;

(c) An action is pending before a court or agency which has jurisdiction over the issue to determine whether child support ((money)) is owed or how DCS should distribute the ((money)) collection.

(d) DCS receives prepaid child support ((money)) and is holding it for distribution in future months under subsection (2)(e) of this section;

(e) DCS mails a notice of intent to distribute support money to the custodial parent (CP) under WAC 388-14A-5050;

(f) DCS may hold funds and not issue a check to the family for amounts under one dollar. DCS must give credit for the ((payment)) collection, but may delay disbursement of that amount until a future ((payment)) collection is received which increases the amount of the ((payment)) disbursement to the family to at least one dollar. If no future ((payments)) collections are received which increase the ((payment)) disbursement to the family ((to)) to at least one dollar, DCS transfers the amount to the department of revenue under RCW 63.29.130. This subsection does not apply to disbursements which can be made by electronic funds transfer (EFT), or to refunds of ((intercepted)) federal ((income)) tax refund((s)) offset collections; or

(g) Other circumstances exist which make a proper and timely distribution of the ((money)) collection impossible through no fault or lack of diligence of DCS.

(3) ((Distribute)) DCS distributes support ((money)) collections based on the date DCS receives the ((money)) collection, except as provided under WAC 388-14A-5005. DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS

receives the ((payment)) support collection, no matter when the ((payment)) money was withheld from the noncustodial parent (NCP).

(4) Under state and federal law, the division of child support (DCS) disburses support collections to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services;

(e) Persons or entity making the payment when DCS is unable to identify the person to whom the support is payable after making reasonable efforts to obtain identification information.

(5) If DCS is unable to disburse a support collection because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the collection in accordance with chapter 63.29 RCW, the uniform unclaimed property act.

(6) WAC 388-14A-5000 through 388-14A-5015 contain the rules for the distribution of support collections by DCS.

(7) DCS changes the distribution rules based on changes in federal statutes and regulations.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5002 How does DCS distribute support ((money)) collections in a nonassistance case? (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support ((money)) collections within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ((money)) collection;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) ((After DCS disburses at least five hundred dollars to the family on a case in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF. DCS gives the noncustodial parent credit against the child support debt for the amount retained for the fee)) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5003 How does DCS distribute ~~((money))~~ support collections in an assistance case? (1) An assistance case is one where the family is currently receiving a ~~((cash public assistance))~~ TANF grant.

(2) The division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ~~((money (this money is kept by the state under WAC 388-14A-2035)))~~ collection;

(b) Second, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family ~~((this money is kept by the state under WAC 388-14A-2035)))~~;

(c) Third~~((:))~~;

(i) To satisfy support debts which are temporarily assigned to the department to reimburse the cumulative amount of assistance paid to the family ~~((this money is kept by the state under WAC 388-14A-2035)))~~; or

(ii) To satisfy support debts which are conditionally assigned to the department. Support collections distributed to conditionally assigned arrears are disbursed according to WAC 388-14A-2039.

(d) Fourth, to satisfy support debts ~~((which exceed the cumulative amount of unreimbursed assistance which has been paid to the family (this money goes to the family)))~~ owed to the family;

(e) Fifth, to prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5004 How does DCS distribute ~~((money))~~ support collections in a former assistance case?

(1) A former assistance case is one where the family is not currently receiving a ~~((cash public assistance))~~ TANF grant, but has at some time in the past.

(2) Subject to the exceptions provided under WAC 388-14A-5005, the division of child support (DCS) ~~((applies))~~ distributes support ~~((money))~~ collections within each Title IV-D former-assistance case:

(a) First, to satisfy the current support obligation for the month DCS received the ~~((money))~~ collection;

(b) Second, to satisfy support debts ~~((which accrued after the family's most recent period of assistance))~~ owed to the family;

(c) Third, to satisfy support debts which are ~~((temporarily))~~ conditionally assigned to the department ~~((to reimburse the cumulative amount of assistance which has been paid to the family))~~. These collections are disbursed according to WAC 388-14A-2039;

(d) Fourth, to satisfy support debts which are permanently assigned to the department to reimburse the cumulative amount of assistance which has been paid to the family; and

~~((e))~~ Fifth, to ~~((satisfy support debts which exceed the cumulative amount of unreimbursed assistance which has been paid to the family; and~~

~~((f))~~ Sixth, ~~((to))~~ prepaid support as provided for under WAC 388-14A-5008.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5005 How does DCS distribute ~~((intercepted))~~ federal ~~((income))~~ tax refund~~((s))~~ offset collections? ~~((+))~~

The division of child support (DCS) ~~((applies intercepted))~~ distributes federal ~~((income))~~ tax refund~~((s))~~ offset collections in accordance with 42 U.S.C. Sec. 657, as follows:

~~((a))~~ (1) First, ~~((to support debts which are permanently assigned to the department to reimburse public assistance payments; and~~

~~((b))~~ Second, ~~((to support debts which are temporarily assigned to the department to reimburse public assistance payments; and~~

~~((c))~~ Third, ~~((to support debts that are not assigned to the department; and~~

~~((d))~~ To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP)) to satisfy the current support obligation for the month in which DCS received the collection.

(2) Second, DCS distributes any amounts over current support depending on the type of case to which the collection is distributed:

(a) In a never assistance case, all remaining amounts are distributed to family arrears, meaning those arrears which have never been assigned.

(b) In a former assistance case, all remaining amounts are distributed first to family arrears, then to permanently assigned arrears, then to conditionally assigned arrears.

(c) In a current assistance case, all remaining amounts are distributed first to permanently assigned arrears, then to temporarily assigned arrears (if they exist), then to conditionally assigned arrears, and then to family arrears.

~~((2))~~ (3) Federal tax refund offset collections distributed to assigned support are retained by the state to reimburse the cumulative amount of assistance which has been paid to the family.

(4) DCS may distribute federal tax refund offset collections only to certified support debts and to current support obligations on cases with certified debts. DCS must refund any excess to the noncustodial parent (NCP).

(5) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal ~~((income))~~ tax refund~~((s))~~ offset collections distributed to nonassistance ~~((support debts))~~ cases.

~~((3))~~ (6) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ~~((payment on behalf of an NCP is from an intercepted))~~ collection from a federal tax refund offset is from a tax refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5006 How does DCS distribute support ((money)) collections when the paying parent has more than one case? ((Except as provided in WAC 388-14A-5005,)) When the NCP has more than one Title IV-D case, the division of child support (DCS) distributes support ((money)) collections:

(1) First, to the current support obligation on each Title IV-D case, in proportion to the amount of the current support order on each case; and

(2) Second, to the total of the support debts whether owed to the family or to the department for the reimbursement of public assistance on each Title IV-D case, in proportion to the amount of support debt owed by the NCP on each case; and

(3) Third, within each Title IV-D case according to WAC 388-14A-5002 ((or)), 388-14A-5003, or 388-14A-5004.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

WAC 388-14A-5010 How does the division of child support ((handle intercepted)) distribute federal ((income)) tax refund((s)) offset collections from ((a)) joint returns? (1) The division of child support (DCS) collects child support ((arrear)) through the interception of federal ((income)) tax refunds. This section deals with the issues that arise when the Secretary of the Treasury intercepts a tax refund based on a joint tax return filed by a noncustodial parent (NCP) and the NCP's spouse who does not owe child support.

(2) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a ((payment)) collection on behalf of an NCP is from an intercepted tax refund based on a joint return, DCS may ((delay distribution of)) distribute fifty percent of that ((payment)) collection and hold the remainder for up to six months in case the NCP's spouse is entitled to a share of the federal ((income)) tax refund.

(3) DCS distributes fifty percent of the ((payment)) collection according to WAC 388-14A-5005.

(4) DCS holds the other fifty percent of the ((payment)) collection in suspense until the earlier of the following:

(a) DCS is notified by OCSE or the Secretary of the Treasury whether DCS must pay back the unobligated spouse's portion of the refund; or

(b) For a period not to exceed six months from notification of the offset.

(5) ((When)) After DCS holds part of a ((payment)) collection under subsection (4) of this section, DCS ((applies)) distributes the remainder of the ((payment)) collection to the NCP's ((back)) support obligations if DCS is not required to return the unobligated spouse's portion of the refund. The CP may:

(a) Request that DCS ((apply)) distribute the payment to the NCP's ((back)) support obligation sooner upon a showing of hardship to the CP; and

(b) Request a conference board if the CP disagrees with DCS' denial of a hardship claim.

NEW SECTION

WAC 388-14A-5015 What is a pass-through payment? (1) A pass-through payment is the portion of a support collection applied to assigned support that the state elects to pay to a family currently receiving TANF. The pass-through payment is paid in the following amounts:

(a) Up to one hundred dollars per month to a family with one child in the assistance unit.

(b) Up to two hundred dollars per month to a family with two or more children in the assistance unit.

(2) The pass-through is paid from collections which are distributed to either current support or arrears.

(3) The pass-through amount can never exceed the amount collected in the month.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-5100 ((What kind of distribution notice does the division of child support send)) How does the division of child support notify the custodial parent about support collections? (1) The division of child support (DCS) mails a distribution ((notice)) and disbursement statement once each month((, or more often,)) to the last known address of a person for whom it received a support collection during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the ((notice)) distribution and disbursement statement:

(a) The amount of support ((money)) collections DCS received and the date of collection;

(b) A description of how DCS ((allocated the)) distributed each support ((money)) collection between current support and the support debt and any fees required by state or federal law; ((and))

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable;

(d) The amount kept by the state to repay public assistance paid to the family;

(e) The amount disbursed to the family as a pass-through payment under WAC 388-14A-5015;

(f) The amount disbursed to the family as a payment on support owed to the family;

(g) The amount kept by the state to pay the twenty-five dollar annual fee, if applicable; and

(h) The amount kept by the state to repay child support paid to the family in error.

(3) The person to whom a distribution ((notice)) and disbursement statement is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the ((notice)) statement to contest how DCS distributed the support ((money)) collections, and must make specific objections to the ((distribution notice)) statement. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested ((notice)) statement.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a ((notice)) distribution and disbursement statement to a recipient of payment services only.

WSR 08-21-010

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-259—Filed October 2, 2008, 4:06 p.m., effective October 6, 2008]

Effective Date of Rule: October 6, 2008.

Purpose: Amend commercial fishing rules.

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

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: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 2, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07100T Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective October 6, 2008 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on Wednesday, October 8, 2008 and Wednesday, October 15, 2008 only.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 6, 2008:

WAC 220-52-07100S Sea cucumbers. (08-243)

WSR 08-21-014

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-258—Filed October 3, 2008, 10:25 a.m., effective October 4, 2008]

Effective Date of Rule: October 4, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 fishery will reduce the number of excess hatchery-origin steelhead and increase the proportion of natural-origin steelhead on the spawning grounds and is 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 promulgate permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 3, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900J Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions in the following waters:

(1) For purposes of this section, "adipose fin clipped steelhead" means steelhead with an adipose fin clip and a healed scar at the site of the fin clip, whether or not any other fins are clipped or a healed scar is present at any other fin position.

(2) Columbia River from Wells Dam to 400 feet below Chief Joseph Dam - effective 12:01 a.m. October 4, 2008 until further notice. Selective gear rules, except bait and motorized vessels allowed. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(3) Methow River - effective 12:01 a.m. October 4, 2008 until further notice. From the Hwy. 97 Bridge in Pateros upstream to the second powerline crossing, and from the first Hwy. 153 Bridge north of Pateros to the confluence with the Chewuch River, open. Closed waters from second powerline crossing to the first Hwy. 153 Bridge. Selective gear rules apply; except it is permissible to fish from motorized vessels. Night closure in effect. All species: Release all fish, except up to two adipose fin clipped steelhead per day may be retained. Beginning December 1 whitefish may be retained. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

(4) Okanogan River - Open 12:01 a.m. October 4, 2008 until further notice: From mouth upstream, except closed from Lake Osoyoos Control Dam (Zosel Dam) downstream to first Highway 97 Bridge. Selective gear rules, except lawful to fish from motorized vessels. Night closure in effect. Daily limit may contain up to two adipose fin clipped steelhead. Release steelhead with anchor (floy) tag attached.

(5) Similkameen River - Mouth to 400 feet below Enloe Dam. Open November 15, 2008 until further notice. Selective gear rules. Night closure in effect. All species: Release all fish, except up to two adipose fin clipped steelhead per day may be retained, and whitefish may be retained begin-

ning December 1. Release steelhead with anchor (floy) tag attached. Whitefish gear rules do not apply.

**WSR 08-21-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-257—Filed October 6, 2008, 3:12 p.m., effective October 7, 2008, 6:00 a.m.]

Effective Date of Rule: October 7, 2008, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: Sets an additional week of treaty Indian commercial fishing and continues sales of fish caught in Drano Lake by enrolled Yakama Nation tribal members. The Group B Index steelhead runsize was updated by the TAC on October 6, 2008. The current estimate is for a runsize of 99,700 fish, compared to the preseason projection of 49,700 Group B steelhead. This increase in runsize does allow for additional harvest based on the *US v. Oregon Management Agreement*. Impacts for ESA listed upriver bright chinook (URBs) also remain. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on October 6, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully

enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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 6, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, shad, carp, walleye or sturgeon for commercial purposes in Columbia River Salmon Management

Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, (except as provided in the following subsections) and the Wind River, White Salmon River, Klickitat River, and Drano Lake, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River

a) SEASON: 6:00 a.m. October 7, to 6:00 p.m. October 10, 2008.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: No minimum mesh-size restriction on gillnets.

2. Mainstem Columbia River

a) SEASON: Immediately until further notice.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, White Salmon, and Klickitat rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Only gill nets may be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries except the Spring Creek Hatchery sanctuary is defined as those waters of the Columbia River within a radius of 50 feet of the Spring Creek Hatchery fishway.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. EXCEPT Sturgeon below Bonneville Dam may NOT be retained for subsistence purposes and may NOT be sold.

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

8. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **Hood River** are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

b) **Herman Creek** are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

c) **Deschutes River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) **Umatilla River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) **Big White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

h) **Little White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

9. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) **Area 1F** (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) **Area 1G** includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) **Area 1H** includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-

mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 7, 2008:

WAC 220-32-05100F	Columbia River salmon seasons above Bonneville Dam. (08-252)
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WSR 08-21-040 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-262—Filed October 8, 2008, 3:31 p.m., effective October 8, 2008, 7:00 p.m.]

Effective Date of Rule: October 8, 2008, 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. 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 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; 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: Sets additional late fall commercial chinook seasons in Zones 4-5 to protect Lewis River fall chinook and allow harvest on healthy chinook populations. The upriver bright run size has been upgraded to 212,500 at the mouth of the Columbia River, which allows non-Indian fisheries to harvest up to 11% of the run. The seasons are consistent with the 2008-2017 management agreement and the 2008 non-Indian salmon allocation agreement. Harvestable salmon and sturgeon remain available. The regulation is consistent with compact action of July 22 and October 7, 2008. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, 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 8, 2008.

Joe Stohr
for Jeff Koenings
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: 7:00 p.m. October 8 to 7:00 a.m. October 9, 2008

7:00 p.m. October 9 to 7:00 a.m. October 10, 2008

b. AREA: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Lewis-B, Washougal and Sandy Rivers

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 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 12 hours of closure of each fishing period.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008. Open hours are 6:00 p.m. to 8:00 a.m.

b. AREA: Blind Slough and Knappa Slough. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek, located approximately 0.5 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge in Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island, to markers on Karlson Island and the Oregon shore. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh size. Gillnet. Monofilament gear is allowed. 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.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 26, 2008. Open hours are 7:00 p.m. 4:00 p.m. to 8:00 a.m.

b. AREA: Tongue Point and South Channel. The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island; a line from a marker at the south-east end of Mott Island; northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7, to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008.

Open hours are 4:00 p.m. to 8:00 a.m.

b. AREA: Deep River. The Deep River fishing area includes all waters downstream of the town of Deep River to the mouth, defined by a line from USCG navigation marker #16, southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and 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.

5. ALLOWABLE SALES: Applies to all seasons stated in items 4-6 (Select Areas): Salmon only. Sturgeon may not be sold.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000T Columbia River below Bonneville. (08-250)

WSR 08-21-057

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 9, 2008, 1:08 p.m., effective October 9, 2008, 1:08 p.m.]

Effective Date of Rule: Immediately.

Purpose: The rule will implement SSB 6751, adopted by the 2008 legislature, which establishes good cause for individuals who quit work to enter an approved apprenticeship training program. The rule describes the conditions under which the amended law applies and defines terms.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

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 legislation took effect on June 12, 2008. A CR-102 proposed rule making order has been filed concerning this rule but there was insufficient time between the effective date of the legislation and the expiration of the first emergency rule to complete the rule-making process. The rule is necessary to clarify eligibility for unemployment benefits of individuals who quit work to enter apprenticeship training.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 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 6, 2008.

Karen T. Lee
Commissioner

NEW SECTION

WAC 192-150-160 Entering approved apprenticeship training—RCW 50.20.050 (2)(b)(xi). (1) Effective

date. RCW 50.20.050 (2)(b)(xi) and this section apply to job separations that occur on or after June 12, 2008.

(2) **Application.** This section applies only if you quit work to enter into related/supplemental (classroom) instruction that is part of an apprenticeship program. If you quit work to begin employment for an employer who is a party to an apprenticeship agreement, the department will review the separation under RCW 50.20.050 (2)(b)(i) and WAC 192-150-050 to determine if you left work to accept a bona fide job offer.

(3) **Definitions.** For purposes of this chapter:

(a) "To enter" means to begin participation in the apprenticeship program.

(i) The term "to enter" includes:

(A) Apprentices who accept temporary work with an employer who is not a party to the apprenticeship agreement and quit work to re-enter training.

(B) Apprentices who quit work for a participating employer to enter a different apprenticeship program.

(ii) The term "to enter" does not include:

(A) Claimants applying for an apprenticeship program who at the time of quitting work are not enrolled in apprenticeship or pre-apprenticeship training. Their eligibility for benefits will be reviewed under RCW 50.20.050(2).

(B) Current apprentices who temporarily stop work for a participating employer to attend related/supplemental instruction that is a required component of their apprenticeship agreement. Claimants in this situation are considered to be on temporary layoff from work. Their eligibility for commissioner approved training will be reviewed under WAC 192-200-020(3).

(b) "Active participation" means attending classes or engaging in other activities that are part of the related/supplemental instruction.

(c) The terms "apprentice," "apprenticeship agreement," "apprenticeship program," "approved," and "related/supplemental instruction" have the meanings described in WAC 296-05-003.

(4) **Establishing good cause.** If you quit work to enter an apprenticeship program, you will have good cause within the meaning of RCW 50.20.050 (2)(b)(xi) if you satisfactorily demonstrate that:

(a) You are entering an apprenticeship program approved by the Washington state apprenticeship training council;

(b) Prior to leaving work, you had a confirmed start date for related/supplemental instruction; and

(c) You continued in your employment for as long as was reasonably consistent with whatever arrangements were necessary to begin the related/supplemental instruction. In any event, you will not be eligible for benefits until the week prior to the week the related/supplemental instruction begins.

**WSR 08-21-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-263—Filed October 10, 2008, 2:59 p.m., effective October 13, 2008]

Effective Date of Rule: October 13, 2008.

Purpose: Amend commercial fishing rules.

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

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: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 10, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07100U Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective October 13, 2008 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on October 15, 16 and 17, 2008, only.

(3) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 13, 2008:

WAC 220-52-07100T Sea cucumbers. (08-259)

WSR 08-21-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-266—Filed October 13, 2008, 12:27 p.m., effective October 13, 2008, 12:27 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-31000X; and amending WAC 220-56-310.

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: A large number of dead and dying Humboldt squid are in the Westport Boat Basin. These squid have spawned and increased harvest will not pose any conservation concerns for this species. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 13, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-31000X Shellfish—Daily limits. Notwithstanding the provisions of WAC 220-56-310, effective immediately through October 19, 2008, there is no daily limit for Humboldt squid in Grays Harbor, Marine Area 2-2.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 20, 2008:

WAC 220-56-31000X Shellfish—Daily limits.

WSR 08-21-081
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-267—Filed October 14, 2008, 12:29 p.m., effective October 14, 2008, 12:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

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

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: The soak time was changed by agreement during preseason North of Falcon negotiations and were omitted from the permanent rules. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 14, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-36-02300I Salmon—Grays Harbor fall fishery. Notwithstanding the provisions of WAC 220-36-023, effective immediately through October 16, 2008, soak time shall not exceed 45 minutes in Grays Harbor commercial fishing Areas 2A/2D. Soak time, defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water, must not exceed 45 minutes. Area 2C will not have a soak time limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 17, 2008:

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

**WSR 08-21-085
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-268—Filed October 14, 2008, 3:12 p.m., effective October 16, 2008, 12:01 p.m.]

Effective Date of Rule: October 16, 2008, 12:01 p.m.

Purpose: Amend personal use fishing rules.

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

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: 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 promulgate permanent rules.

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

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

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

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

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

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

Date Adopted: October 14, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-36000N 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 16 through 11:59 p.m. October 18, 2008, razor clam digging is allowed in Razor Clam Area 2 and 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.

2. Effective 12:01 p.m. October 17 through 11:59 p.m. October 18, 2008, 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.

3. 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, 2008:

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

**WSR 08-21-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-265—Filed October 14, 2008, 3:30 p.m., effective October 14, 2008, 3:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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: Preliminary efforts to provide a salmon fishery based on hatchery reared triploid summer chinook stocking have been successful. However, this fishery is in its infancy, much information concerning abundance and fish origin is needed to guide future management decisions. This fishery was previously opened with a one fish limit. This regulation increases the limit to two fish and is designed to evaluate catch rates of chinook present in the lake. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 14, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900K Exceptions to statewide rules—Lake Chelan (Chelan Co.) Notwithstanding the provisions of WAC 232-28-619, effective immediately through February 8, 2009, a person may fish for salmon in waters of Lake Chelan, except closed within 400 feet of the mouth of all tributaries. Daily limit of two Chinook salmon, minimum size 15 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 9, 2009:

WAC 232-28-61900K Exceptions to statewide rules—Lake Chelan (Chelan Co.)

**WSR 08-21-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-269—Filed October 14, 2008, 4:35 p.m., effective October 15, 2008]

Effective Date of Rule: October 15, 2008.
Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100U and 220-47-41100Y; and amending WAC 220-47-311 and 220-47-411.

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: Harvestable numbers of chum are available to start a seven-day week commercial purse seine and gill net fishery in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 14, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-31100U Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, effective October 15 through November 14, 2008, it is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Areas 7 and 7A. Unless otherwise amended, all other permanent rules remain in effect.

AREA	TIME	DATE
7, 7A:	7 AM - 6 PM	- 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31
	7 AM - 5 PM	- 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14

NEW SECTION

WAC 220-47-41100Y Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective October 15 through November 14, 2008, it is permissible to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Management and Catch Reporting Areas 7 and 7A. Unless otherwise amended, all other permanent rules remain in effect.

AREA	TIME	DATE
7, 7A:	7AM - Midnight; use of recovery box required and 45-minute soak times required	10/15, 10/16, 10/17, 10/18
	7AM - Midnight	10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14

REPEALER

The following sections of the Washington Administrative Code are repealed effective November 15, 2008:

- WAC 220-47-31100U Purse seine—Open periods.
- WAC 220-47-41100Y Gill net—Open periods.

**WSR 08-21-095
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-270—Filed October 15, 2008, 2:09 p.m., effective October 15, 2008, 6:00 p.m.]

Effective Date of Rule: October 15, 2008, 6:00 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. 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 220-33-01000U; 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; 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: Sets additional late fall commercial fishing seasons in the mainstem Columbia River to maximize harvest of healthy hatchery salmon, and reduce handle of ESA - listed salmon and steelhead. The upriver bright chinook run size has been upgraded to 224,400 at the mouth of the Columbia River, which allows non-Indian fisheries to harvest up to 11% of the run. In addition, Columbia River coho returns are greater than expected, with inseason estimates totaling 450,000 coho compared to the preseason estimate of less than 200,000 coho. The seasons are consistent with the 2008-2017 management agreement and the 2008 non-Indian salmon allocation agreement and pose minimal risk at exceeding ESA constraints. Harvestable salmon and sturgeon remain available. The regulation is consistent with compact action of July 22 and October 14, 2008. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho and White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, 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 15, 2008.

Jeff Koenings
Director

NEW SECTION

WAC 220-33-01000V 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: 6:00 p.m. October 15 to 6:00 a.m. October 16, 2008

8:00 p.m. October 16 to 8:00 a.m. October 17, 2008

b. AREA: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: 8-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Lewis-B, Washougal and Sandy Rivers

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When the quick reporting rule is required, Columbia River

reports must be submitted within 24 hours of closure of each fishing period.

2. Mainstem Columbia River

a. SEASON: 7:00 a.m. through 7:00 p.m. Thursday October 16, 2008

b. AREA: SMCRA 1A, 1B, 1C (upstream to the Longview Bridge) and SMCRA 1D, 1E (Zones 4-5)

c. GEAR: No minimum mesh size restriction. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays, Elochoman-A, Lewis-B, Washougal and Sandy Rivers

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When the quick reporting rule is required, Columbia River reports must be submitted within 24 hours of closure of each fishing period.

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008. Open hours are 6:00 p.m. to 8:00 a.m.

b. AREA: Blind Slough and Knappa Slough. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek, located approximately 0.5 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge in Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island, to markers on Karlson Island and the Oregon shore. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh size. Gillnet. Monofilament gear is allowed. 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.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 26, 2008. Open hours are 7:00 p.m. 4:00 p.m. to 8:00 a.m.

b. AREA: Tongue Point and South Channel. The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the

flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island; a line from a marker at the south-east end of Mott Island; northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7, to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008. Open hours are 4:00 p.m. to 8:00 a.m.

b. AREA: Deep River. The Deep River fishing area includes all waters downstream of the town of Deep River to the mouth, defined by a line from USCG navigation marker #16, southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and 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.

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5 (Select Areas): Salmon only. Sturgeon may not be sold.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. October 15, 2008:

WAC 220-33-01000U Columbia River below Bonneville. (08-262)

WSR 08-21-098
EMERGENCY RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed October 16, 2008, 9:04 a.m., effective October 16, 2008, 9:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: In 2007, the legislature amended RCW 41.56.070 to allow collective bargaining agreements between cities, counties, school districts, and other municipal corporations and their represented employees to provide for a term of up to six years. The law previously allowed a maximum term of three years. Adopted in 1980 and last amended in 2001, WAC 391-25-030 establishes the timing for the filing of representation petition, and recognizes that under RCW 41.56.070, a collective bargaining agreement only operates as a "bar" to a representation election for three years. This is known as the contract bar doctrine. The amendment to WAC 391-25-030 conforms the existing rule to the 2007 statutory change by recognizing that for cities, counties, school districts and other municipal corporations, collective bargaining agreements may be up to six years in length, and as a result, operate as a contract bar to a representation election for up to six years.

Citation of Existing Rules Affected by this Order:
Amending WAC 391-25-030.

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.050, 41.56.060, 41.56.070, 41.56.090, 41.58.050, 41.59.070, 41.59.080, 41.59.110, 41.76.020, 41.76.060, 41.80.070, 41.80.080.

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

Reasons for this Finding: RCW 41.56.070 amended the maximum term for collective bargaining agreements between cities, counties, and other municipal corporations. The proposed change is necessary to clarify ongoing confusion recently expressed by clientele between the amended statute and the rule in its current form.

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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, 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 14, 2008.

Dario de la Rosa
Appeals Administrator

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

WAC 391-25-030 Petition—Time for filing. (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely

only if it is filed during the "window" period not more than ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date, except that any agreement entered into between school districts, cities, counties or municipal corporations and their represented employees will only operate as a bar for the first six years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

(2) A "certification bar" exists where a certification has been issued by the agency, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) More than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

WSR 08-21-100

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 16, 2008, 11:13 a.m., effective October 20, 2008]

Effective Date of Rule: October 20, 2008.

Purpose: The department has started the permanent rule-making process to amend this rule, but adopting an emergency rule in the interim is essential so the program is compliant with the federal regulations that allow both paid and unpaid medical expenses incurred by a client during the retroactive eligibility period to be applied towards the client's spenddown in the current eligibility period. Treatment of

hospital bills will no longer be singled out, but will mirror the federal rule by eliminating specific references to hospital bills and amending the language regarding the prioritization of expenses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-519-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.500.

Other Authority: 42 C.F.R. 435.831 (3)(e) and (f).

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: Some individuals may be adversely affected if this rule is not changed to mirror federal requirements. Adoption of the rule ensures compliance with federal requirements and continuation of federal funds.

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

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

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

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

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

Date Adopted: October 7, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-519-0110 Spenddown of excess income for the medically needy program. (1) ~~((The person applying for))~~ An individual who applies for medical and is eligible for medically needy (MN) ((medical)) coverage with a spenddown may choose((s)) a three month or a six month base period ((for spenddown calculation)). A base period is a time period used to compute the amount of the spenddown liability. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section ~~((apply))~~ applies.

(2) A ~~((person's))~~ base period begins on the first day of the month ((of application)), in which an individual applies. subject to the exceptions in subsection (4) of this section.

(3) An individual may request a separate base period ~~((may be made for a retroactive period. The retroactive base~~

period is made up of the)) to cover the time period up to three calendar months immediately prior to the month of application. This is called a retroactive base period.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) ~~((A client is not or will not be resource eligible for the))~~ The individual has countable resources which are over the applicable standard for any part of the required base period; or

(c) The ~~((client))~~ individual is not ~~((or will not be))~~ able to meet the ~~((TANF related or))~~ SSI-related requirement or other program requirements for the required base period; or

(d) The ~~((client))~~ individual is ~~((or will be))~~ eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The ~~((client))~~ individual was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) The ~~((amount of a person's "spenddown"))~~ spend-down liability is calculated by the department. The MN countable income from each month of the base period is compared to the medically needy income limit (MNIL). ~~((The excess income from each of the months in the))~~ Income which is over the MNIL standard (based on the individual's household size) in each month in the base period is added together to determine the ~~((=))~~ total spenddown~~((=))~~ ~~((for the base period))~~ amount. The MNIL standard is found at http://www1.dshs.wa.gov/pdf/esa/manual/Standards_C_MedAsst_Chart.pdf.

(6) If household income varies and ~~((a person's))~~ an individual's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC 388-519-0100(5).

(7) ~~((Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:~~

~~((a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;~~

~~((b) Second, medical expenses which would not be covered by the MN program;~~

~~((c) Third, hospital expenses paid by the person during the base period;~~

~~((d) Fourth, hospital expenses, regardless of age, owed by the applying person;~~

~~((e) Fifth, other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the base period; and~~

~~((f) Sixth, other medical expenses, potentially payable by the MN program which are owed by the applying person))~~ If income decreases, the department approves CN coverage for each month in the base period where the individual's countable income and resources are equal to or below the applicable CN standards. Children under the age of nineteen and pregnant women who become CN eligible in any month of the base period remain continuously eligible for CN coverage

for the remainder of the certification even if there is a subsequent increase in income.

~~((8) ((If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020))~~ Once an individual's spenddown amount has been determined, qualifying medical expenses are deducted. To be considered a qualifying medical expense, the expense:

(a) Must be an expense for which the individual is financially liable;

(b) Must not have been used to meet another spenddown;

(c) Must not be the confirmed responsibility of a third party. The department allows the entire expense if the third party has not confirmed its coverage within:

(i) Forty-five days of the date of service; or

(ii) Thirty days after the base period ends.

(d) Must be an incurred expense for the individual, if he or she is the applicant or:

(i) His or her spouse;

(ii) A family member, residing in the home of the individual, for whom the individual is financially responsible; or

(iii) A financially responsible relative.

(e) Must meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period;

(ii) Be for medical services either paid or unpaid and incurred during the base period;

(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical was not established in that base period. Paid expenses which meet this requirement may be applied towards the current base period; or

(iv) Be for paid or unpaid medical services and incurred during a previous base period, if it was necessary for the individual to make a payment due to delays in the certification for that base period.

(9) ~~((If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount))~~ An exception to the provisions in subsection (8) of this section exists for qualifying medical expenses which have been paid on behalf of the individual by a publicly administered program during the current base period. The department uses the qualifying medical expenses to meet the spenddown liability. To qualify for this exception the program:

(a) Must not be federally funded or make the payments from federally matched funds;

(b) Must not pay the expenses prior to the first day of the base period; and

(c) Must provide proof of the expenses paid on behalf of the individual.

(10) ~~((To be counted toward spenddown, medical expenses must:~~

~~((a) Not have been used to meet a previous spenddown; and~~

~~((b) Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:~~

- (i) Forty-five days of the date of the service; or
- (ii) Thirty days after the base period ends; and
- (e) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period and be for services for:

(A) The applying person; or

(B) A family member legally or blood-related and living in the same household as the applying person.

(ii) Be for medical services either paid or unpaid and incurred during the base period; or

(iii) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period.)

Once the department has determined that the expenses meet the definition of a qualified expense as defined in subsection (8) or (9) of this section, the expenses are subtracted from the spenddown liability to determine the date the individual is eligible for medical coverage to begin. Qualifying medical expenses are deducted in the following order:

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, copayments and premiums which are the individual's responsibility under Medicare Part A, Part B, Part C or Part D. (Medical insurance premiums are income deductions under WAC 388-519-0100(3));

(b) Second, medical expenses incurred and paid by the individual during the three month retroactive base period if eligibility for medical was not established in that base period;

(c) Third, current payments on, or unpaid balance of, medical expenses incurred prior to the current base period which have not been used to establish eligibility for medical coverage in any other base period. The department sets no limit on the age of an unpaid expense; however, the expense must still be a current liability and be unpaid at the beginning of the base period;

(d) Fourth, other medical expenses which would not be covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider;

(e) Fifth, other medical expenses which have been incurred by the individual during the base period which are potentially payable by the MN program (less any confirmed third party payments which apply to the charges), even if payment is denied for these services because they exceed the department limits on amount, duration or scope of care. Scope of care is described in WAC 388-501-0060 and 388-501-0065; and

(f) Sixth, other medical expenses which have been incurred by the applying person during the base period which are potentially payable by the MN program (less any confirmed third party payments which apply to the charges) which are within the department limits on amount, duration or scope of care.

(11) ((An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses

from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period)) If an individual submits verification of qualifying medical expenses with their application which meets or exceeds the spenddown liability, he or she is eligible for MN medical coverage for the remainder of the base period unless their circumstances change. See WAC 388-418-0005 to determine which changes must be reported to the department. The beginning of eligibility is determined as described in WAC 388-416-0020.

(12) ((The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days)) If an individual cannot meet the spenddown amount at the time he or she submits their application, they are not eligible until they provide proof of additional qualifying expenses which meet the spenddown liability.

(13) Each dollar of a qualifying medical expense may count once against a spenddown period that leads to eligibility for MN coverage. However, medical expenses may be used more than once ((if)) under the following circumstances:

(a) The ((person)) individual did not meet their total spenddown ((amount)) liability and ((did not become)) became eligible in ((that)) a previous base period and the bill remains unpaid; ((and)) or

(b) The medical expense was ((applied to that unsuccessful spenddown and remains an unpaid bill)) a bill incurred and paid within three months of the current application and the department could not establish eligibility for the individual in the retroactive base period.

(14) ((To be considered toward spenddown, written)) The individual is responsible to give the proof of qualifying medical expenses ((for services rendered to the client must be presented to the department)). The deadline for presenting medical expense information is thirty days after the base period ends unless there is a good ((cause)) reason for delay ((can be documented)).

(15) ((The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).

(16)) Once ((a person)) an individual meets ((their)) the spenddown ((and they are issued a medical identification card for MN coverage)) requirement and the certification begin date has been established, newly identified expenses

cannot be considered toward that spenddown unless there is a good reason for the delay in submitting the expense or there was department error in determining the correct begin date. ~~((Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.))~~

(16) Good cause reasons for delay in providing medical expense information to the department include, but are not limited to:

(a) The individual did not receive a timely bill from his or her medical provider or insurance company;

(b) The individual has medical issues which prevents him or her from submitting proof in a timely manner; or

(c) The individual meets the criteria for needing a supplemental accommodation under chapter 388-472 WAC.

(17) The department is not responsible to pay for any expense or portion of an expense which has been assigned to an individual's spenddown liability. If an expense is potentially payable under the MN program, and only a portion of the medical expense has been assigned to meet spenddown, the medical provider may not bill the individual for more than the amount which as assigned to the remaining spenddown liability. See WAC 388-502-0160 Billing a client.

(18) The department follows rules and methodologies described in WAC 388-502-0100 to determine whether any payment is due to the medical provider on medical expenses which have been partially assigned to meet a spenddown liability.

(19) If the medical expense assigned to spenddown was incurred outside of a period of MN eligibility, or if the expense is not the type that is covered by the department's medical assistance programs, the department is not responsible for any portion of the bill.

WSR 08-21-101
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-271—Filed October 16, 2008, 1:06 p.m., effective October 16, 2008, 1:06 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: The 2008 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and North Puget Sound require adoption of harvest seasons and the prohibition on night-time fishing contained in this emergency rule. This emergency rule closes the pot fishery season for nonpot shrimp and the beam trawl fishery in the remain-

ing catch areas of Puget Sound that are still open. These closures are necessary to protect egg-bearing females as per the Puget Sound shrimp management plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100J 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) Shrimp Management Area 3 is open immediately, until 5:00 p.m. October 31, 2008, except as provided for in this section.

(i) Catch Areas 23A-E, 23B, 23D, 25A, Sequim Bay, and the Discovery Bay shrimp district are closed.

(2) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100I	Puget Sound shrimp pot and beam trawl fishery. (08-238)
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The following section of the Washington Administrative Code is repealed, effective 5:00 p.m. October 31, 2008:

WAC 220-52-05100J	Puget Sound shrimp pot and beam trawl fishery—Season.
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WSR 08-21-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-272—Filed October 16, 2008, 1:12 p.m., effective October 16, 2008, 1:12 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000X; and amending WAC 220-44-050.

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: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 16, 2008.

J. P. Koenings
 Director

NEW SECTION

WAC 220-44-05000Y Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 73, Number 199, published on October 14, 2008. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is

extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl, and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000X	Coastal bottomfish catch limits. (08-182)
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WSR 08-21-122
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-273—Filed October 17, 2008, 1:39 p.m., effective October 20, 2008, 6:00 a.m.]

Effective Date of Rule: October 20, 2008, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act. This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); *State v. James*, 72 Wn.2d 746, 435 P.2d 521 (1967); 40 Stat. 515 (Columbia River compact).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: Sets the ninth week of treaty Indian commercial gill net fishing and continues sales of fish caught in tributary fisheries by enrolled Yakama Nation tribal members and platform and hook and line fisheries in the mainstem Columbia River. Tribal members have expressed an interest in continuing the mainstem gill net fishery. Catch and effort is waning as salmon abundance and market quality continues to decline. Impact limits to ESA listed steelhead and upriver bright chinook remain available for treaty Indian fisheries. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on October 16, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H)

allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act.

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

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 17, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

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

treaties may fish for salmon, shad, carp, or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River

a) SEASON: 6:00 a.m. October 20, to 6:00 p.m. October 23, 2008.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: No minimum mesh-size restriction on gillnets.

2. Mainstem Columbia River

a) SEASON: Immediately until further notice.

b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Columbia River Tributaries above Bonneville Dam

a) SEASON: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: Drano Lake, White Salmon, and Klickitat rivers.

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line. Only gill nets may be used in Drano Lake (no mesh restriction, 150-foot length restriction).

4. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

b) AREA: (SMCRA) 1E On the Washington shoreline from 600 feet below the fish ladder at the Bonneville Dam North shore powerhouse, downstream to Beacon Rock (bank fishing only).

c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line, consistent with Yakama Nation regulations.

5. SANCTUARIES: Standard river mouth and dam sanctuaries, except the Spring Creek Hatchery sanctuary not in effect.

6. ALLOWABLE SALES: Chinook, coho, sockeye, steelhead, walleye, shad, and carp. Sturgeon may not be sold. Sturgeon between 42 inches and 60 inches in length may be retained in the Bonneville Pool (SMCRA 1F) for subsistence purposes only. Sturgeon between 4 feet and 5 feet in length may be retained in The Dalles and John Day pools (SMCRA 1G, 1H) for subsistence purposes only. Sturgeon below Bonneville Dam may **NOT** be retained for subsistence purposes and may **NOT** be sold.

7. ADDITIONAL REGULATIONS: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240.

8. Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) **Hood River** are those waters along the Oregon side of the Columbia River, and they extend to mid-stream at right angles to the thread of the Columbia River between markers

located approximately 0.85 miles downriver from the west bank at the end of the break wall at the west end of the port of Hood River, and 1/2-mile upriver from the east bank.

b) **Herman Creek** are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling, and the other is located on the west bank to the north of the boat ramp.

c) **Deschutes River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) **Umatilla River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2-mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) **Big White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2-mile downstream from the west bank, upstream to Light "35."

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles downstream from the west bank and 1/2-mile upstream from the east bank.

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad tunnel approximately 1/8-miles downstream from the west bank.

h) **Little White Salmon River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27," upstream to a marker located approximately 1/2-mile upstream from the eastern shoreline.

9. Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) **Area 1F** (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods, and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) **Area 1G** (The Dalles Pool) includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) **Area 1H** (John Day Pool) includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2-mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. October 20, 2008:

WAC 220-32-05100G Columbia River salmon seasons above Bonneville Dam. (08-257)

WSR 08-21-124
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-275—Filed October 17, 2008, 2:56 p.m., effective October 17, 2008, 2:56 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-411.

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: Returning coho abundance is below forecast and it is necessary to close the gill net fishery in Salmon Management and Catch Reporting Area 6D. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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 17, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-41100Z Puget Sound gill net fishery. Notwithstanding the provisions of WAC 220-47-411, effec-

tive immediately until further notice, it is unlawful to fish in Salmon Management and Catch Reporting Area 6D for commercial purposes with gill net gear.

WSR 08-21-125
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-264—Filed October 17, 2008, 3:04 p.m., effective November 1, 2008]

Effective Date of Rule: November 1, 2008.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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 opener for Swift Reservoir was delayed due to weather conditions which made access from shore or a boat extremely limited and unsafe. This extension will provide additional fishing opportunity for the public. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 17, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900I Exceptions to statewide rules—Swift Reservoir. Notwithstanding the provisions of WAC 232-28-619, effective November 1 through November 30, 2008, a person may fish in those waters of Swift Reservoir. Unless otherwise amended, all other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2008:

WAC 232-28-61900I Exceptions to statewide rules—Swift Reservoir.

WSR 08-21-126
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)
[Filed October 17, 2008, 4:31 p.m., effective October 20, 2008]

Effective Date of Rule: October 20, 2008.

Purpose: The department has started the permanent rule-making process to amend this rule, but adopting an emergency rule in the interim is essential so the program is compliant with the federal regulations that allow both paid and unpaid medical expenses incurred by a client during the retroactive eligibility period to be applied towards the client's spenddown in the current eligibility period. Treatment of hospital bills will no longer be singled out, but will mirror the federal rule by eliminating specific references to hospital bills and amending the language regarding the prioritization of expenses.

Citation of Existing Rules Affected by this Order: Amending WAC 388-519-0110.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.500.

Other Authority: 42 C.F.R. 435.831 (3)(e) and (f).

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: This emergency filing is necessary to correct the text in the emergency rule filed for WAC 388-519-0110 under WSR 08-21-100 on October 17, 2008. Some individuals may be adversely affected if this rule is not changed to mirror federal requirements. Adoption of the rule ensures compliance with federal requirements and continuation of federal funds. The department has initiated the permanent rule-making process with a preproposal statement of inquiry file[d] as WSR 08-19-032.

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

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

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

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

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

Date Adopted: October 17, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-519-0110 Spenddown of excess income for the medically needy program. (1) The person applying for MN medical coverage chooses a three month or a six month base period for spenddown calculation. The months must be consecutive calendar months unless one of the conditions in subsection (4) of this section apply.

(2) A person's base period begins on the first day of the month of application, subject to the exceptions in subsection (4) of this section.

(3) A separate base period may be made for a retroactive period. The retroactive base period is made up of the three calendar months immediately prior to the month of application.

(4) A base period may vary from the terms in subsections (1), (2), or (3) of this section if:

(a) A three month base period would overlap a previous eligibility period; or

(b) A client is not or will not be resource eligible for the required base period; or

(c) The client is not or will not be able to meet the TANF-related or SSI-related requirement for the required base period; or

(d) The client is or will be eligible for categorically needy (CN) coverage for part of the required base period; or

(e) The client was not otherwise eligible for MN coverage for each of the months of the retroactive base period.

(5) The amount of a person's "spenddown" is calculated by the department. The MN countable income from each month of the base period is compared to the MNIL. The excess income from each of the months in the base period is added together to determine the "spenddown" for the base period.

(6) If income varies and a person's MN countable income falls below the MNIL for one or more months, the difference is used to offset the excess income in other months of the base period. If this results in a spenddown amount of zero dollars and cents, see WAC 388-519-0100(5).

(7) Once a person's spenddown amount is known, their qualifying medical expenses are subtracted from that spenddown amount to determine the date of eligibility. The following medical expenses are used to meet spenddown:

(a) First, Medicare and other health insurance deductibles, coinsurance charges, enrollment fees, or copayments;

(b) Second, medical expenses which would not be covered by the MN program;

(c) Third, (~~hospital expenses paid by the person during the base period~~) other medical expenses which were incurred and paid during the three month retroactive base period, if eligibility for medical was not established for that period;

(d) Fourth, (~~hospital expenses, regardless of age, owed by the applying person;~~

~~(e) Fifth,~~) other medical expenses, potentially payable by the MN program, which have been paid by the applying person during the current base period; and

~~((f) Sixth)~~ (e) Fifth, other medical expenses, potentially payable by the MN program which are owed by the applying person.

(8) If a person meets the spenddown obligation at the time of application, they are eligible for MN medical coverage for the remainder of the base period. The beginning date of eligibility would be determined as described in WAC 388-416-0020.

(9) If a person's spenddown amount is not met at the time of application, they are not eligible until they present evidence of additional expenses which meets the spenddown amount.

(10) To be counted toward spenddown, medical expenses must:

(a) Not have been used to meet a previous spenddown; and

(b) Not be the confirmed responsibility of a third party. The entire expense will be counted unless the third party confirms its coverage within:

(i) Forty-five days of the date of the service; or

(ii) Thirty days after the base period ends; and

(c) Meet one of the following conditions:

(i) Be an unpaid liability at the beginning of the base period and be for services for:

(A) The applying person; or

(B) A family member legally or blood-related and living in the same household as the applying person.

(ii) Be for medical services either paid or unpaid and incurred during the base period; ~~((f))~~

(iii) Be for medical services incurred and paid during the three month retroactive base period if eligibility for medical was not established in that base period. Paid expenses which meet this requirement may be applied towards the current base period; or

(iv) Be for medical services paid and incurred during a previous base period if that client payment was made necessary due to delays in the certification for that base period.

(11) An exception to the provisions in subsection (10) of this section exists. Medical expenses the person owes are applied to spenddown even if they were paid by or are subject to payment by a publicly administered program during the base period. To qualify, the program cannot be federally funded or make the payments of a person's medical expenses from federally matched funds. The expenses do not qualify if they were paid by the program before the first day of the base period.

(12) The following medical expenses which the person owes are applied to spenddown. Each dollar of an expense or obligation may count once against a spenddown cycle that leads to eligibility for MN coverage:

(a) Charges for services which would have been covered by the department's medical programs as described in WAC 388-501-0060 and 388-501-0065, less any confirmed third party payments which apply to the charges; and

(b) Charges for some items or services not typically covered by the department's medical programs, less any third party payments which apply to the charges. The allowable items or services must have been provided or prescribed by a licensed health care provider; and

(c) Medical insurance and Medicare copayments or coinsurance (premiums are income deductions under WAC 388-519-0100(4)); and

(d) Medical insurance deductibles including those Medicare deductibles for a first hospitalization in sixty days.

(13) Medical expenses may be used more than once if:

(a) The person did not meet their total spenddown amount and did not become eligible in that previous base period; and

(b) The medical expense was applied to that unsuccessful spenddown and remains an unpaid bill.

(14) To be considered toward spenddown, written proof of medical expenses for services rendered to the client must be presented to the department. The deadline for presenting medical expense information is thirty days after the base period ends unless good cause for delay can be documented.

(15) The medical expenses applied to the spenddown amount are the client's financial obligation and are not reimbursed by the department (see WAC 388-502-0100).

(16) Once a person meets their spenddown and they are issued a medical identification card for MN coverage, newly identified expenses cannot be considered toward that spenddown. Once the application is approved and coverage begins the beginning date of the certification period cannot be changed due to a clients failure to identify or list medical expenses.

WSR 08-21-137

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 08-274—Filed October 20, 2008, 4:05 p.m., effective October 20, 2008, 4:05 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule change is to correct a reference to the Code of Federal Regulations (C.F.R.) for highly migratory species. The rule currently refers to C.F.R. Title 50, Part 660, Subpart G. It should be Subpart K.

Citation of Existing Rules Affected by this Order: Amending WAC 220-44-035.

Statutory Authority for Adoption: RCW 77.65.010, 77.12.047, and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to permit officers to enforce possession and landing requirements and gear restrictions for highly migratory species fisheries. The department is making the same change to the permanent rule via the expedited rule-making process.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 20, 2008.

Phil Anderson
for Jeff Koenings
Director

[AMENDATORY SECTION (Amending Order 07-279, filed 11/7/07)]

WAC 220-44-035 Highly migratory species fisheries—Possession and landing requirements—Gear restriction. (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, highly migratory species taken in violation of any permit or data collection requirements as published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart K. These federal regulations provide the requirements for highly migratory species fisheries in the Pacific Ocean. There may be additional regulations listed in the Federal Register, and these override the regulations in the CFR if there are any inconsistencies between the two. Chapter 220-44 WAC incorporates the CFR by reference and is based, in part, on the CFR. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or the internet at www.pcouncil.org. State regulations may apply that are more restrictive than federal regulations.

(2) Except as authorized under the federal rules referenced in this subsection, it is unlawful to use drift gill net gear in state and offshore waters west of the Bonilla-Tatoosh line, north of the Washington-Oregon boundary, and south of the United States-Canada boundary.

(3) Violation of reporting requirements under this section is punishable pursuant to RCW 77.15.280.

(4) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published

above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 08-21-153
RESCISSION OF EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed October 21, 2008, 3:59 p.m.]

The Washington department of fish and wildlife is rescinding WSR 08-21-137, amending WAC 220-44-035, that was filed on October 20, 2008. It was incorrectly done as an amendment rather than as a new section.

Loreva M. Preuss
Criminal Justice Liaison and
Administrative Regulations
Coordinator Enforcement Program

WSR 08-21-154
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-278—Filed October 21, 2008, 4:04 p.m., effective October 21, 2008, 4:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule change is to correct a reference to the Code of Federal Regulations (C.F.R.) for highly migratory species. The rule currently refers to C.F.R. Title 50, Part 660, Subpart G. It should be Subpart K.

Citation of Existing Rules Affected by this Order: Amending WAC 220-44-035.

Statutory Authority for Adoption: RCW 77.65.010, 77.12.047, and 77.04.020.

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

Reasons for this Finding: This emergency rule is needed to permit officers to enforce possession and landing requirements and gear restrictions for highly migratory species fisheries. The department is making the same change to the permanent rule via the expedited rule-making process.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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 21, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-44-03500B Highly migratory species fisheries—Possession and landing requirements—Gear restriction. (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, highly migratory species taken in violation of any permit or data collection requirements as published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart K. These federal regulations provide the requirements for highly migratory species fisheries in the Pacific Ocean. There may be additional regulations listed in the Federal Register, and these override the regulations in the CFR if there are any inconsistencies between the two. Chapter 220-44 WAC incorporates the CFR by reference and is based, in part, on the CFR. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or the internet at www.pcouncil.org. State regulations may apply that are more restrictive than federal regulations.

(2) Except as authorized under the federal rules referenced in this subsection, it is unlawful to use drift gill net gear in state and offshore waters west of the Bonilla-Tatoosh line, north of the Washington-Oregon boundary, and south of the United States-Canada boundary.

(3) Violation of reporting requirements under this section is punishable pursuant to RCW 77.15.280.

(4) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

WSR 08-21-155
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-277—Filed October 21, 2008, 4:14 p.m., effective October 21, 2008, 7:00 p.m.]

Effective Date of Rule: October 21, 2008, 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. 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 220-33-01000V and 220-33-01000W; 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; 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: Sets what is likely to be the final fishing periods for the fall 2008 season in the mainstem Columbia River. Impacts on ESA-listed chinook, chum, coho and steelhead are expected to remain within the allowable limits. The seasons are consistent with the 2008-2017 management agreement through the parties to *U.S. v. Oregon* and the 2008 non-Indian salmon allocation agreement. Harvestable salmon and sturgeon remain available. The regulation is consistent with compact action of July 22 and October 21, 2008. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these 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 Endangered Species Act, 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 21, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-0100W 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: 7:00 p.m. Tuesday Oct. 21 through 7:00 a.m. Wednesday Oct. 22

7:00 p.m. Thursday Oct 23 through 7:00 a.m. Friday Oct 24

7:00 p.m. Sunday Oct 26 through 7:00 a.m. Monday Oct 27

7:00 p.m. Tuesday Oct. 28 through 7:00 a.m. Wednesday Oct. 29

7:00 p.m. Thursday Oct 30 through 7:00 a.m. Friday Oct 31

b. AREA: SMCRA 1D, 1E (Zones 4-5)

c. GEAR: No minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Lewis-B, Washougal and Sandy Rivers

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisher-

ies. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When the quick reporting rule is required, Columbia River reports must be submitted within 24 hours of closure of each fishing period.

2. Mainstem Columbia River

a. SEASON: 7:00 a.m. through 7:00 p.m. Wednesday October 22, 2008

7:00 a.m. through 7:00 p.m. Wednesday October 29, 2008

b. AREA: SMCRA 1A, 1B, 1C (upstream to the Longview Bridge)

c. GEAR: No minimum mesh size restriction. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays, Elochoman-A, Lewis-B, Washougal and Sandy Rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of three (3) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When the quick reporting rule is required, Columbia River reports must be submitted within 24 hours of closure of each fishing period.

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008. Open hours are 6:00 p.m. to 8:00 a.m.

b. AREA: Blind Slough and Knappa Slough. The Blind Slough fishing area includes all waters from markers at the mouth of Gnat Creek, located approximately 0.5 mile upstream of the county road bridge, downstream to markers at the mouth of Blind Slough. Concurrent waters extend downstream of the railroad bridge in Blind Slough. The Knappa Slough fishing area includes all waters bounded by a line from the north marker at the mouth of Blind Slough, westerly to a marker on Karlson Island, downstream to boundary lines defined by markers on the west end of Minaker Island, to markers on Karlson Island and the Oregon shore. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh size. Gillnet. Monofilament gear is allowed. 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.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 26, 2008. Open hours are 7:00 p.m. 4:00 p.m. to 8:00 a.m.

b. AREA: Tongue Point and South Channel. The Tongue Point fishing area includes all waters bounded by a line from a marker midway between the red USCG navigation light #2 at the tip of Tongue Point and the downstream (northern most) pier (#8) at the Tongue Point Job Corps facility, to the flashing green USCG navigation light #3 on the rock jetty at the west end of Mott Island; a line from a marker at the southeast end of Mott Island; northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore. All waters are under concurrent jurisdiction. The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7, to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

c. GEAR: 6-inch maximum mesh. Gillnet. Monofilament gear is allowed. In the Tongue Point area: Net length maximum of 250 fathoms, and weight not to exceed two pounds on any one fathom on the lead line. Participants in the Tongue Point fishery may have stored onboard their boats gill nets of legal mesh size but with leadline in excess of two pounds per any one fathom. In the South Channel area: Net length maximum of 100 fathoms, and no weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, immediately through October 31, 2008.

Open hours are 4:00 p.m. to 8:00 a.m.

b. AREA: Deep River. The Deep River fishing area includes all waters downstream of the town of Deep River to the mouth, defined by a line from USCG navigation marker #16, southwest to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge.

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and 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.

6. ALLOWABLE SALES: Applies to all seasons stated in items 3-5 (Select Areas): Salmon only. Sturgeon may not be sold.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 p.m. October 21, 2008:

WAC 220-33-01000V Columbia River below Bonneville. (08-270)

The following section of the Washington Administrative Code is repealed effective November 2, 2008:

WAC 220-33-01000W Columbia River below Bonneville.

**WSR 08-21-161
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-276—Filed October 22, 2008, 9:52 a.m., effective October 22, 2008, 9:52 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

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: Implementing selective gear rules for these areas of the Quillayute River system is for the purpose of facilitating the release of wild coho and was not intended to preclude fishing from motorized boats. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: October 22, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules—Bogachiel, Calawah, Dickey, Quillayute and Sol Duc rivers. Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 31, 2008, internal combustion motors are allowed in waters open for salmon in the Bogachiel, Calawah, Dickey, Quillayute and Sol Duc Rivers. Unless otherwise amended, all other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2008:

WAC 232-28-61900L	Exceptions to statewide rules—Bogachiel, Calawah, Dickey, Quillayute and Sol Duc rivers.
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