

**WSR 07-20-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-228—Filed September 20, 2007, 4:18 p.m., effective September 20, 2007, 4:18 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 220-52-05100R; 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 regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the commercial shrimp pot fishery for spot shrimp in the remaining catch areas of Puget Sound that are still open. These closures are necessary to protect spot shrimp during the onset of their egg-bearing period, as is required by the 2007 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2007.

Phil Anderson  
 for Jeff Koenings  
 Director

NEW SECTION

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

(1) Shrimp pot gear:

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

shrimp species, excluding spot shrimp, until October 15, 2007, except as provided for in this section:

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

(ii) All spot shrimp caught must be immediately returned to the water unharmed.

(b) The shrimp accounting week is Monday through Sunday.

(i)(c) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(d) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(c) above.

(2) Shrimp beam trawl gear:

(a) Shrimp Management Area 3 (outside of the Discovery Bay Shrimp District, Sequim Bay, and Catch Area 23D) is open immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula. b) Catch area 20A and that portion of Catch Areas 20B, 21A and 22A within Shrimp Management Area 1B are open immediately, until further notice.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100R	Puget Sound shrimp pot and beam trawl fishery—Season. (07-211)
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**WSR 07-20-013  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-226—Filed September 20, 2007, 4:26 p.m., effective September 21, 2007, 5:00 a.m.]

Effective Date of Rule: September 21, 2007, 5:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100C; and amending WAC 220-47-401.

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: Fraser Panel has relinquished control for Fraser Panel areas (area defined under Art. XV, Annex. II, Pacific Salmon Treaty 1985) back to state authority. Harvestable numbers of marked coho and pink are available for a reef net fishery in 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 20, 2007.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

**WAC 220-47-40100D Reef net open periods.** Notwithstanding the provisions of WAC 220-47-401, it is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each area:

(1)			
AREA	TIME	DATES	
7, 7A	5 AM - 9 PM Daily	9/21 - 11/17	

(a) It is unlawful to retain Chinook or sockeye salmon taken with reef net gear at all times, and it is unlawful to retain chum or wild coho prior to October 1.

(2) All other saltwater and freshwater areas - closed.

**"Quick Reporting Fisheries":**

All fisheries opened under this section, and any commercial salmon fishery openings in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030) are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 5:00 a.m. September 21, 2007:

WAC 220-47-40100C Reef net open periods. (07-190)

**WSR 07-20-015  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-227—Filed September 21, 2007, 2:48 p.m., effective September 22, 2007, 12:01 a.m.]

Effective Date of Rule: September 22, 2007, 12:01 a.m.

Purpose: Amend personal use 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: Lower Columbia fall chinook hatchery returns are behind schedule and brood stock goals are not being met. Stream surveys and creel sampling also indicate no large numbers of fall chinook present in several lower Columbia streams at this time. Other Columbia chinook stocks are returning below preseason forecasts and low stream flows are adding concerns for hatchery and wild tule fall chinook escapement. Wild fall chinook tules are listed as "threatened" under the Endangered Species Act. This rule change will also promote conservation by reducing snagging. 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: September 21, 2007.

Loreva M. Preuss  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900Z Exceptions to statewide rules—Cowlitz, Elochoman, Green, Kalama, Lewis, North Fork Lewis, North Fork Toutle, Toutle and Washougal rivers.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. September 22, 2007, until further notice, it is unlawful to retain Chinook salmon in the following waters:

- (1) Cowlitz River (Cowlitz/Lewis Co.)
- (2) Elochoman River (Wahkiakum Co.)
- (3) Green River (Cowlitz Co.)
- (4) Kalama River (Cowlitz Co.)
- (5) Lewis River (Clark/Cowlitz Co.)
- (6) North Fork Lewis River (Clark Cowlitz Co.)
- (7) North Fork Toutle River (Cowlitz Co.)
- (8) Toutle River (Cowlitz Co.)
- (9) Washougal River (Clark Co.)

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

**WSR 07-20-016  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-229—Filed September 21, 2007, 3:27 p.m., effective October 1, 2007, 8:00 a.m.]

Effective Date of Rule: October 1, 2007, 8:00 a.m.

Purpose: Amend commercial fishing rules.

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

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 state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes, which have been entered as required by court order. 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: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-52-04600L Puget Sound crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. October 1, 2007 until further notice:

(1) It will be lawful to fish for Dungeness crab for commercial purposes in the following areas:

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

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

(c) Langlely: That portion of Marine Fish/Shellfish Catch Area 24C inshore of the 400 foot depth contour within an area described by two lines projected northeasterly from Sandy Point and the entrance to the marina at Langlely.

(d) Useless Bay: That portion of Marine Fish/Shellfish Catch Area 26A in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47° 58.782' N, 122° 30.84' W) projected 110° true to the boulder on shore (47° 57.690' N, 122° 26.742' W).

(e) Birch Bay: That portion of Marine Fish/Shellfish Catch Area 20A in Birch Bay between the line from the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the western boundary of Birch Bay State Park to Birch Point.

(f) Fidalgo Bay: That portion of Marine Fish/Shellfish Catch Area 22B in Fidalgo Bay south of a line from the red #4 buoy at the Cap Sante Marina entrance to the northern end of the eastern most oil dock and thence to shore.

(g) Deer Harbor: That portion of Marine Fish/Shellfish Catch Area 22A in Deer Harbor north of a line from Steep Point to Pole Pass.

(2) The following area is closed to commercial crab fishing:

(a) That portion of Marine Fish/Shellfish Catch Area 25A west of the 123° 6.5' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. October 1, 2007:

WAC 220-52-04600K Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (07-205)

**WSR 07-20-018  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-233—Filed September 21, 2007, 5:02 p.m., effective September 21, 2007, 5:02 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100N; and 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: ESA listed Hood Canal summer chum escapement is low enough that fishery impacts within Area 12A are adversely affecting migration patterns, and harvest of the listed run is of concern. 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: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

**NEW SECTION**

**WAC 220-47-41100P Gill net—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7 AM - 7 PM	9/24, 9/25, 9/26, 9/27, 9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon - Midnight; Use of recovery box required	10/12, 10/17, 10/18, 10/19	6 1/4"
	Noon - Midnight	10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	6 1/4"

Note: In Areas 7 and 7A after September 30 but prior to October 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

AREA	TIME	DATE(S)	MINIMUM MESH
7B:	6PM - 8AM	NIGHTLY 9/21	5"
	7AM 9/23 - 8PM 10/27		5"
	7AM 10/28 - 8PM 11/3		6 1/4"
	7AM 11/5 - 4PM 11/9		6 1/4"
	7AM 11/12 - 4PM 11/16		6 1/4"
	7AM 11/19 - 4PM 11/23		6 1/4"
	7AM 11/26 - 4PM 11/30		6 1/4"
	8AM 12/3 - 4PM 12/7		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December.

8:	7AM - 7PM	11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/26, 11/28, 11/30	6 1/4"
8A:	6PM - 8AM	NIGHTLY 10/9	5"
	7AM - 8PM	10/16, 10/18, 10/19	5"
	8AM - 8PM	10/23, 10/25, 10/26, 10/29, 10/31, 11/2	6 1/4"
	7AM - 7PM	11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23	6 1/4"
	7AM - 6PM	11/27, 11/29, 11/30	6 1/4"
8D:	6PM - 8AM	NIGHTLY 9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11	5"
	7AM - 8PM	10/18, 10/19	5"
	8AM - 8PM	10/25, 10/26, 11/1, 11/2	5"
	7AM - 7PM	11/8, 11/9	5"
	7AM - 7PM	11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/29, 11/30	6 1/4"
	9A:	6AM 9/26 - 7PM 11/3	

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12A:	Closed -		
12, 12B:	8AM - 8PM	10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM - 7PM	11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM - 7PM	11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM - 6PM	11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-47-41100N Gill net—Open periods. (07-176)

**WSR 07-20-019  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-231—Filed September 21, 2007, 5:05 p.m., effective September 25, 2007, 6:00 a.m.]

Effective Date of Rule: September 25, 2007, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia 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 220-32-05100L; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets an additional week of treaty fishing for fall season. An estimated 40,000 chinook are available for treaty harvest based on the in-season forecast of 115,000 upriver bright fall chinook. Allows the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under the Yakama Nation rules, and a commercial season in the mainstem is open concurrently. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 Management Agreement. Rule is consistent with action of the Columbia River compact on September 21, 2007. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2005-2007 Interim Management Agreement.

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.

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

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

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

Date Adopted: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-32-05100M 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, or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1F, 1G, and 1H and in the White Salmon River and Klickitat River, except that those individuals possessing treaty fishing rights under the Yakama, 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. Open Periods: 6:00 a.m. September 25 until 6:00 p.m. September 28, 2007

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: Gillnets: 8-inch minimum mesh size restriction.

2. Open Periods: Immediately until further notice.

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Open Periods: Immediately until further notice, and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries for enrolled Yakama Nation members.

a) Open Areas: White Salmon and Klickitat rivers

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Allowable sale includes: Chinook, coho, steelhead, walleye, shad and carp. Sockeye may be retained but not sold. Sturgeon between 45 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.

5. Twenty-four (24) hour quick reporting will be in effect for Washington buyers pursuant to WAC 220-69-240.

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

a) Spring Creek are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouth of Spring Creek. This area is closed from August 1 to November 1 of each year.

b) 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.

c) 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.

d) 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.

e) 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.

f) 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."

g) 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.

h) 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.

i) 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.

7. 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 September 25, 2007 at 6:00 a.m.:

WAC 220-32-05100L	Columbia River salmon seasons above Bonneville Dam. (07-212)
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#### **WSR 07-20-020**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 07-225—Filed September 21, 2007, 5:05 p.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The department of fish and wildlife is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

### NEW SECTION

**WAC 232-28-61900X Exceptions to statewide rules—Humptulips River.** Notwithstanding the provisions of WAC 232-28-619, effective October 1 through October 15, 2007, a person may fish for salmon in the Humptulips River from Ocean Beach Road to Highway 101 Bridge. Daily limit 6 hatchery coho of which no more than 2 may be adult hatchery coho. Release adult Chinook, wild adult coho and chum. Bait prohibited.

### REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2007:

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

**WSR 07-20-021  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-232—Filed September 21, 2007, 5:05 p.m., effective September 24, 2007, 7:00 a.m.]

Effective Date of Rule: September 24, 2007, 7:00 a.m.

Purpose: The purpose of this rule making is to allow 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, 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 220-33-01000N; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets one day of coho fishing in the lower river. There are upriver bright and lower river hatchery fall chinook impacts and ESA-listed coho impacts available for this fishery. The season is consistent with the 2005-2007 interim management agreement, the 2007 non-Indian salmon allocation agreement adopted for 2007. Regulation is consistent with compact action of July 26 and September 21, 2007. 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. *Shappy 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 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

## NEW SECTION

**WAC 220-33-0100P 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 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. AREA: SMCRA 1A, 1B, 1C**

a. SEASON: 7:00 a.m. to 7:00 p.m. September 24, 2007

b. GEAR: 6-inch maximum mesh size, unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 8 inches, and the length of any one net does not exceed 1,500 feet in length. 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.

c. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of ten 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 includes only mainstem fisheries. Green sturgeon retention is prohibited. 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 the department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 5 hours of closure of the designated fishery.

## **2. Blind Slough/Knappa Slough Select Area.**

a. OPEN AREA: 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. 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 about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

## **3. Tongue Point/South Channel Select Area.**

a. OPEN AREA: 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. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh. 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 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. OPEN AREA: 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 south-

west to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gill net. Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. 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 2-4: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

**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 September 24, 2007 at 7:00 a.m.:

WAC 220-33-01000N Columbia River season below Bonneville. (07-224)

**WSR 07-20-022**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-230—Filed September 21, 2007, 5:08 p.m., effective September 22, 2007, 12:01 a.m.]

Effective Date of Rule: September 22, 2007, 12:01 a.m.

Purpose: The purpose of this rule making is to allow 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, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: The upriver bright fall chinook run size has been upgraded to 115,000 fish at the mouth of the Columbia River, compared to the in-season update on September 17 of 105,000. This run size upgrade allows for additional opportunity in part of the Columbia River to resume the chinook retention fishery. There is insufficient time to promulgate permanent regulations.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the Tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 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 1, Amended 0, Repealed 2.

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

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

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

Date Adopted: September 21, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

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

**Columbia River:**

1) From Buoy 10 upstream to Bonneville Dam (except for those waters closed under permanent regulations): Effective 12:01 a.m. September 22 through December 31, release all Chinook.

2) From Bonneville Dam upstream to the Hood River Bridge (except for those waters closed under permanent regulations): Effective: 12:01 a.m. September 22 until further notice release all Chinook.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 22, 2007:

WAC 232-28-61900W Exceptions to statewide rules—Columbia River. (07-222)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2008:

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

**WSR 07-20-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-235—Filed September 25, 2007, 4:07 p.m., effective September 26, 2007, 7:00 a.m.]

Effective Date of Rule: September 26, 2007, 7:00 a.m.

Purpose: The purpose of this rule making is to allow 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, 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 220-33-01000Q; 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 2005-2007 Interim Management Agreement for Upriver Chinook, Sockeye, Steelhead, Coho and White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington Fish and Wildlife Commission policies concerning Columbia river fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets one day of coho fishing in the lower river. There are upriver bright and lower river hatchery fall chinook impacts and ESA-listed coho impacts available for this fishery. Very few lower river hatchery fall chinook (LRH) should be caught in this fishery, as the fish are in the tributaries or staging near the mouths where the commercial fishing sanctuaries are in place. The season is consistent with the 2005-2007 interim management agreement, the 2007 non-Indian salmon allocation agreement adopted for 2007. Regulation is consistent with compact action of July 26 and September 25, 2007. 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 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 25, 2007.

J. P. Koenings  
Director

## NEW SECTION

**WAC 220-33-0100Q 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 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. AREA: SMCRA 1A, 1B, 1C**

a. SEASON: 7:00 a.m. to 7:00 p.m. September 26, 2007

b. GEAR: 6-inch maximum mesh size, unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. 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.

c. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of ten 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 includes only mainstem fisheries. Green sturgeon retention is prohibited. 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 the department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of closure of the designated fishery.

### **2. Blind Slough/Knappa Slough Select Area.**

a. OPEN AREA: 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. 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 about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

### **3. Tongue Point/South Channel Select Area.**

a. OPEN AREA: 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. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

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

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 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. OPEN AREA: 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 south-

west to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gill net. Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. 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 2-4: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

**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 7:00 a.m. September 26, 2007:

WAC 220-33-01000P Columbia River season below Bonneville. (07-232)

#### **WSR 07-20-043**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed September 26, 2007, 8:33 a.m., effective September 26, 2007, 8:33 a.m.]

Effective Date of Rule: Immediately.

Purpose: This action is necessary because the department did not provide sufficient notice to stakeholders, as required by the Administrative Procedure Act (APA), of changes to WAC 388-544-0250 that eliminated certain covered services as then set forth in new WAC 388-544-0475 Noncovered services, eyeglasses, and contact lenses.

The department has filed CR-101 as WSR 07-10-125 to begin the permanent rule-making process for the noncovered services, eyeglasses, and contact lenses portion of chapter 388-544 WAC to correct this matter.

Citation of Existing Rules Affected by this Order: Amending WAC 388-544-0475.

Statutory Authority for Adoption: RCW 74.08.090.

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

Reasons for this Finding: To bring the department into compliance with state law (Administrative Procedure Act).

This continues the emergency rule that is currently in effect under WSR 07-11-023 while the department completes the permanent rule-making process begun under WSR 07-10-125. The department anticipates filing the permanent rule proposal (CR-102) by January 2008.

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 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 1, Repealed 0.

Date Adopted: September 25, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-13-038, filed 6/6/05, effective 7/7/05)

**WAC 388-544-0475 Vision care—Noncovered services, eyeglasses, and contact lenses.** ((The medical assistance administration (MAA) does not cover the following:

- (1) Executive style eyeglass lenses;
- (2) Bifocal contact lenses;
- (3) Daily and two week disposable contact lenses;
- (4) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
- (5) Services for cosmetic purposes only;
- (6) Glass lenses including those that darken when exposed to light;
- (7) Group vision screening for eyeglasses;
- (8) Nonglare or anti-reflective lenses;
- (9) Orthoptics and visual training therapy;
- (10) Progressive lenses;
- (11) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.
- (12) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");
- (13) Upgrades at private expense to avoid MAA's contract limitations (e.g., frames that are not available through MAA's contract or noncontract frames or lenses for which the client or other person pays the difference between MAA's payment and the total cost)) Reserved.

**WSR 07-20-053**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-237—Filed September 27, 2007, 8:55 a.m., effective September 29, 2007, 12:01 a.m.]

Effective Date of Rule: September 29, 2007, 12:01 a.m.

Purpose: The purpose of this rule making is to allow 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, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

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

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: The upriver bright fall chinook run size has been upgraded to 118,500 fish. This upgrade in run size allows for chinook retention throughout the Columbia River downstream of the Highway 395 Bridge in Pasco. Lower river fall chinook have generally moved out of the mainstem Columbia River at this time and will not be vulnerable to mainstem fisheries. The tributaries below Bonneville Dam including Camas Slough remain closed for chinook retention. Increased coho bag limit will provide additional harvest of hatchery coho and help reduce surplus to lower Columbia River hatcheries. There is insufficient time to promulgate permanent regulations.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 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 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 1, Amended 0, Repealed 2.

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

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

Date Adopted: September 27, 2007.

Phil Anderson  
for Jeff Koenings  
Director

NEW SECTION

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

**Columbia River:**

1) From Buoy 10 upstream to Bonneville Dam (except for those waters closed under permanent regulations): Effective 12:01 a.m. September 29 through December 31, Chinook retention allowed. Daily limit 6 fish of which no more than 4 may be adult salmon of which only 1 may be an adult Chinook.

2) Camas Slough: Waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island: Effective: Effective 12:01 a.m. September 29 until further notice, release all Chinook.

3) From Bonneville Dam upstream to the Hood River Bridge (except for those waters closed under permanent regulations): Effective: 12:01 a.m. September 29 through December 31, Chinook retention allowed. Daily limit 6 fish of which no more than 2 may be adult salmon.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. September 29, 2007:

WAC 232-28-61900B	Exceptions to statewide rules—Columbia River. (07-230)
WAC 232-28-61900D	Exceptions to statewide rules—Columbia River. (07-131)

**WSR 07-20-054**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-236—Filed September 27, 2007, 1:00 p.m., effective October 1, 2007, 12:01 a.m.]

Effective Date of Rule: October 1, 2007, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900N and 232-28-61900C; 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: This regulation provides additional opportunity for sturgeon retention in the Columbia River and tributaries above the Wauna power lines. Significant numbers of harvestable sturgeon remain on the guideline for this area. Regulation is consistent with results of the September 26, 2007, joint state hearing on this issue and conforms Washington and Oregon 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 2.

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

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

Date Adopted: September 27, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Columbia River sturgeon.** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. October 1, 2007 through December 31, 2007, in those waters of the Columbia River and tributaries from the Wauna power lines upstream to Bonneville Dam, it shall be lawful to retain white sturgeon 7 days per week.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. October 1, 2007:

WAC 232-28-61900N	Exceptions to statewide rules—Columbia River sturgeon (07-179)
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The following section of the Washington Administrative Code is repealed, effective 12:01 a.m. January 1, 2008:

WAC 232-28-61900C	Exceptions to statewide rules—Columbia River sturgeon.
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**WSR 07-20-060**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 28, 2007, 8:19 a.m., effective September 28, 2007, 8:19 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities (DDD) is filing this emergency rule to extend the emergency rule filed as WSR 07-12-050. This rule is necessary to ensure consistent application of the rules across the programs administered by DDD.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-1605.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: Title 71A RCW.

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

Reasons for this Finding: These emergency rules extend the emergency rules filed as WSR 07-12-050 as the depart-

ment proceeds to adopt the rules on a permanent basis. Based on legislative action, this amendment is necessary to ensure consistency across programs administered by the division of developmental disabilities. Without this rule, clients may incorrectly be found eligible or ineligible for services or benefits. The department proposed this rule under WSR 07-11-130 but will repropose the rules at a later date and adopt them as permanent.

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: September 18, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

**WAC 388-845-1605 Who is eligible to receive respite care?** ~~((The person providing your care is))~~ You are eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

(1) You live in a private home ~~((with an unpaid caregiver))~~ and no one living with you is paid to be your caregiver; ~~((or))~~

(2) You live with a paid caregiver who is ~~((:~~

~~((a) A natural, step or adoptive parent;~~

~~((b)) your natural, step or adoptive parent; or~~

(3) You live with a caregiver who is paid by DDD to provide care to you and is:

(a) A contracted companion home provider; or

~~((e))~~ (b) A licensed children's foster home provider.

### WSR 07-20-061

#### EMERGENCY RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 28, 2007, 8:20 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is updating requirements for a mid-certification review to be considered complete for temporary assistance for needy families (TANF) and state family assistance (SFA). The changes are necessary to meet federal

work verification requirements under Public Law 109-171 and the TANF interim final rules issued on June 29, 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0011.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: Title 45 C.F.R., Part 261.2 as published in Federal Register on 6-29-2006.

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

Reasons for this Finding: The rule change under this filing is necessary to meet work verification requirements of the Deficit Reduction Act for employed TANF households. Federal regulations require the department to verify this information every six months beginning in October 2007.

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: September 19, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-025 and 07-01-023, filed 11/29/06 and 12/8/06, effective 10/1/07)

**WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?** (1) **A mid-certification review (MCR)** is a form we send you to ask about your current circumstances. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance, family-related medical, or Basic Food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Only receive Refugee Cash Assistance as described under WAC 388-400-0030; or

(ii) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for Basic food if:

(i) Your assistance unit has a certification period of six months or less; or



(ii) All adults in your assistance unit are elderly or disabled and have no earned income.

**(3) When we send the review form:**

If you must complete a MCR...	We send your review form...
(a) For one program such as Basic Food or Family Medical.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(b) For two or more programs, and all program have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(c) For Basic Food and another program when either program has a certification or review period between six and twelve months.	In the fifth month of your Basic Food certification period when you receive Basic Food and another program. You must complete your review by the 10th day of month six of your Basic Food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review in ~~(one)~~ one [one] of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) ~~(Complete)~~ **Complete** [Complete] the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;
- (iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iv) If you receive family medical benefits, give us proof of your income even if it has not changed; ~~(and)~~

(v) If you receive Temporary Assistance for Needy Families and you are working or self employed, you must give us proof of your income even if it has not changed; and

(vi) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;
- (ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iii) If you receive family medical benefits, give us proof of your income even if it has not changed;

(iv) If you receive Temporary Assistance for Needy Families and you are working or self employed, you must give us proof of your income ~~(and the hours you work)~~ even if it has not changed; and

(v) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you ten days notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

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

**WSR 07-20-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed September 28, 2007, 8:21 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is amending rules in chapters 388-450, 388-478, and 388-492 WAC to update income, benefit, and deduction standards for the Washington Basic Food program and WASHCAP. These changes must be implemented effective October 1, 2007, to comply with federal requirements for the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Other Authority: 7 C.F.R. § 273.9 Income and deductions.

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

Reasons for this Finding: The United States Department of Agriculture, Food and Nutrition Service (FNS) publishes new income standards, maximum benefit amounts, standard deduction, and maximum shelter standards at the end of each federal fiscal year to be used in the next federal fiscal year effective for October benefits. In addition, FNS requires the department to adjust the standard utility allowance and standards used in calculating WASHCAP benefits each year.

These changes are implemented at the start of each federal fiscal year on October 1.

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

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

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

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

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

Date Adopted: September 19, 2007.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

**WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food?** We subtract the following amounts from your assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

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

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	<del>\$(139)</del> <u>143</u>
5	<del>\$(162)</del> <u>167</u>
6 or more	<del>\$(186)</del> <u>191</u>

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

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

- (i) Up to two hundred dollars for each dependent under age two; and
- (ii) Up to one hundred seventy-five dollars for each dependent age two or older.

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

(5) Legally obligated current or back child support paid to someone outside of your AU:

- (a) For a person who is not in your AU; or
- (b) For a person who is in your AU to cover a period of time when they were not living with you.

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

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

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

EFFECTIVE ~~((10-1-2006))~~ 10-1-2007

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	<del>\$(1062))</del> <u>1,107</u>	<del>\$(817))</del> <u>851</u>	<del>\$(155))</del> <u>162</u>	<del>\$(1348))</del> <u>1,404</u>
2	<del>((1430))</del> <u>1,484</u>	<del>((1100))</del> <u>1,141</u>	<del>((284))</del> <u>298</u>	<del>((1815))</del> <u>1,883</u>
3	<del>((1799))</del> <u>1,861</u>	<del>((1384))</del> <u>1,431</u>	<del>((408))</del> <u>426</u>	<del>((2283))</del> <u>2,361</u>
4	<del>((2167))</del> <u>2,238</u>	<del>((1667))</del> <u>1,721</u>	<del>((518))</del> <u>542</u>	<del>((2750))</del> <u>2,840</u>
5	<del>((2535))</del> <u>2,615</u>	<del>((1950))</del> <u>2,011</u>	<del>((615))</del> <u>643</u>	<del>((3218))</del> <u>3,318</u>
6	<del>((2904))</del> <u>2,992</u>	<del>((2234))</del> <u>2,301</u>	<del>((738))</del> <u>772</u>	<del>((3685))</del> <u>3,797</u>
7	<del>((3272))</del> <u>3,369</u>	<del>((2517))</del> <u>2,591</u>	<del>((816))</del> <u>853</u>	<del>((4153))</del> <u>4,275</u>
8	<del>((3640))</del> <u>3,746</u>	<del>((2800))</del> <u>2,881</u>	<del>((932))</del> <u>975</u>	<del>((4620))</del> <u>4,754</u>
9	<del>((4009))</del> <u>4,123</u>	<del>((3084))</del> <u>3,171</u>	<del>((1049))</del> <u>1,097</u>	<del>((5088))</del> <u>5,233</u>
10	<del>((4378))</del> <u>4,500</u>	<del>((3368))</del> <u>3,461</u>	<del>((1166))</del> <u>1,219</u>	<del>((5556))</del> <u>5,712</u>
Each Additional Member	<del>((+369))</del> <u>+377</u>	<del>((+284))</del> <u>+290</u>	<del>((+117))</del> <u>+122</u>	<del>((+468))</del> <u>+479</u>

Exceptions:

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

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

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

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

(c) Water or sewer;

(d) Well or septic tank installation/maintenance;

(e) Garbage/trash collection; and

(f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	<del>\$(298))</del> <u>328</u>
2	<del>\$(307))</del> <u>338</u>
3	<del>\$(316))</del> <u>348</u>
4	<del>\$(325))</del> <u>358</u>
5	<del>\$(334))</del> <u>368</u>
6 or more	<del>\$(343))</del> <u>378</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited util-

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

**WAC 388-450-0195 Utility allowances for Basic Food programs.** (1) For Basic Food, "utilities" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

ity allowance (LUA) of two hundred (~~(thirty-eight)~~) fifty-nine dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(thirty-eight)~~) forty dollars.

**AMENDATORY SECTION** (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:
  - (a) (~~(Three hundred forty-two)~~) Two hundred seventy-five dollars or more a month for shelter, we use three hundred (~~(fifty-four)~~) sixty-six dollars as your shelter cost; or
  - (b) Less than (~~(three hundred forty-two)~~) two hundred seventy-five dollars for shelter, we use one hundred (~~(seventy-one)~~) seventy-six dollars as your shelter cost; and
  - (c) We add the current (~~(limited)~~) standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:
  - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
  - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
  - (c) If you are eligible for WASHCAP, you will get at least ten dollars in food benefits each month.

**WSR 07-20-063**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-238—Filed September 28, 2007, 8:43 a.m., effective September 27, 2007, 8:00 p.m. [September 28, 2007, 8:43 a.m.]]

Effective Date of Rule: September 27, 2007, 8:00 p.m. [September 28, 2007, 8:43 a.m.]

Purpose: The purpose of this rule making is to allow 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, federal law governing Washington's relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000Q; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Provides one night of chinook target fishing in the upper river. Impacts on upriver bright fall chinook are available under the commercial allocation and the ESA guidelines. The season is consistent with the 2005-2007 interim management agreement, the 2007 non-Indian salmon allocation agreement adopted for 2007. Regulation is consistent with compact action of July 26 and September 26, 2007. 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 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 27, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-33-01000R 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 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

**1. AREA: SMCRA 1D and 1E**

a. SEASON: 8:00 p.m. September 27 to 6:00 a.m. September 28, 2007

b. GEAR: Drift gill nets only; 8-inch minimum mesh and 9-3/4 inch maximum mesh

**2. OTHER GEAR REGULATIONS:**

a. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010 (9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length.

b. 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.

**3. ALLOWABLE SALE:** Applies to all seasons stated in items

**1. Salmon and white sturgeon.**

a. A maximum of ten white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

b. The sturgeon possession/sales limit includes only mainstem fisheries.

c. Green sturgeon retention is prohibited.

d. 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 the department rule.

**4. SANCTUARIES:** Lewis-B, Washougal, and Sandy Rivers.

**5. OTHER:** Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of closure of the designated fishery.

**6. Blind Slough/Knappa Slough Select Area.**

a. OPEN AREA: 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. 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 about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

**7. Tongue Point/South Channel Select Area.**

a. OPEN AREA: 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. 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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights from immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

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

**8. Deep River Select Area. .**

a. OPEN AREA: 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 south-west to a marker on the Washington shore. Concurrent waters extend downstream of the Highway 4 bridge

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gill net. Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. 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.

9. ALLOWABLE SALES: Applies to all seasons stated in items 6-8: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

**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 8:00 p.m. September 27, 2007:

WAC 220-33-01000Q Columbia River season below Bonneville. (07-194)

**WSR 07-20-069  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-239—Filed September 28, 2007, 1:54 p.m., effective October 3, 2007, 6:00 a.m.]

Effective Date of Rule: October 3, 2007, 6:00 a.m.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia 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 220-32-05100M; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Puget Sound Gillnetters Ass'n v. Moos*, 92 Wn.2d 939, 603 P.2d 819 (1979); 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets an additional week of treaty fishing for fall season. An estimated 27,000 upriver bright chinook are available for treaty harvest based on the in-season forecast of 118,500 upriver bright fall chinook. Through September 28, an estimated 15,400 upriver bright chinook have been harvested. Allows the sale of fish caught in platform and hook and line fishery in Zone 6. Also allows the sale of fish caught in Yakama Nation tributary fisheries to be sold when those tributaries are open under Yakama Nation rules, and a commercial season in the mainstem is open concurrently. Harvestable numbers of salmon and steelhead are available under the ESA guideline. The fishery catches are expected to remain within the allocation and guidelines of the 2005-2007 management agreement. Rule is consistent with action of the Columbia River compact on September 27, 2007. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2005-2007 interim management agreement.

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.

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

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

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

Date Adopted: September 28, 2007.

Phil Anderson  
for Jeff Koenings  
Director

#### NEW SECTION

**WAC 220-32-05100N 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, or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1F, 1G, and 1H and in the White Salmon River and Klickitat River, except that those individuals possessing treaty fishing rights under the Yakama, 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. Open Periods: 6:00 a.m. October 3 until 6:00 p.m. October 6, 2007.

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: Gillnets: 8-inch minimum mesh size restriction.

2. Open Periods: Immediately until further notice.

a) Open Areas: SMCRA 1F, 1G, 1H

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

3. Open Periods: Immediately until further notice, and only during those days and hours when those tributaries are open under lawfully enacted Yakama Nation tribal subsistence fisheries for enrolled Yakama Nation members.

a) Open Areas: White Salmon and Klickitat rivers

b) Gear: hoop nets, dip bag nets, and rod and reel with hook-and-line.

4. Allowable sale includes: Chinook, coho, steelhead, walleye, shad and carp. Sockeye may be retained but not sold. Sturgeon between 45 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.

5. Twenty-four (24) hour quick reporting will be in effect for Washington buyers pursuant to WAC 220-69-240.

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

a) Spring Creek are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one- and one-half miles downstream from the western shoreline of the mouth of Spring Creek. This area is closed from August 1 to November 1 of each year.

b) 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.

c) 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.

d) 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.

e) 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.

f) 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."

g) 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.

h) 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.

i) 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.

7. 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.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective 6:00 a.m. October 3, 2007:

WAC 220-32-05100M Columbia River salmon seasons above Bonneville Dam. (07-231)

**WSR 07-20-070**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed September 28, 2007, 3:43 p.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: The department is proposing the amendment of chapter 388-310 WAC, WorkFirst, to comply with the federal law changes under Deficit Reduction Act of 2005 (DRA), Public Law 109-171.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0500, 388-310-0600, 388-310-0900, 388-310-1000, 388-310-1050, 388-310-1100, 388-310-1400, 388-310-1500, and 388-310-1700.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, and 74.08.090.

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

Reasons for this Finding: The technical changes in the language in the WAC amendments will comply with the requirements of the DRA. The department is required to have these changes in place October 1, 2007, in order to comply with the state of Washington's TANF verification plan only recently approved by Health and Human Services on September 14, 2007. The rule is being concurrently amended through the regular adoption process (WSR 06-21-055, filed October 13, 2006).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 9, 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 9, Repealed 0.

Date Adopted: September 27, 2007.

Stephanie E. Schiller  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-21 issue of the Register.

**WSR 07-20-072**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 07-241—Filed September 28, 2007, 4:47 p.m., effective September 28, 2007, 4:47 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100M and 220-47-41100P; 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: Sockeye salmon nonretention for all gears in Areas 7, 7A, and 7B is necessary and pink salmon nonretention in purse seine gear for Areas 7, 7A, and 7B is also necessary to meet conservation goals for the areas. 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: September 28, 2007.

J. P. Koenings  
Director



NEW SECTION

**WAC 220-47-31100N Purse seine—Open periods.** It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 7PM with use of recovery box; 7AM - 4:00PM without use of recovery box	10/12
	7AM - 6PM with use of recovery box; 7AM - 3:15PM without use of recovery box	10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2
	7AM - 5PM with use of recovery box; 7AM - 2:30PM without use of recovery box	11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16
7B:	7AM 9/23 - 6PM 11/3	
	7AM 11/5 - 4PM 11/9	
	7AM 11/12 - 4PM 11/16	
	7AM 11/19 - 4PM 11/23	
	7AM 11/26 - 4PM 11/30	
	8AM 12/3 - 4PM 12/7	

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	7AM - 5PM	11/6
	7AM - 5PM	11/13
	7AM - 5PM	11/20
	7AM - 4PM	11/27
8A:	7AM - 7PM	Limited participation - two boats only; purse seine vessel CONFIDENCE, and purse seine vessel ARLINE (10/1, 10/8).
	7AM - 6PM	10/15, 10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
8D:	7AM - 7PM	10/1, 10/8
	7AM - 6PM	10/15, 10/22, 10/30, 11/1
	7AM - 5PM	11/7, 11/12, 11/14, 11/20
	7AM - 4PM	11/26, 11/28
10, 11	7AM - 6PM	10/16, 10/23, 10/25
	7AM - 5PM	10/30, 11/6, 11/8, 11/13
	7AM - 4PM	11/20
12, 12B:	7AM - 6PM	10/22, 10/29, 10/31
	7AM - 5PM	11/5, 11/12, 11/19
12C:	7AM - 5PM	11/13, 11/20
	7AM - 4PM	11/27

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 27 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, and prior to September 9 in Area 7B.

Chum salmon - prior to September 30 in Areas 7 and 7A.

Sockeye salmon at all times.

Pink salmon at all times.

All other saltwater and freshwater areas - closed.

NEW SECTION

**WAC 220-47-41100Q Gill net—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the seasons provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7AM - 7PM	9/28, 10/1, 10/2, 10/3, 10/4, 10/5, 10/8, 10/9, 10/10, 10/11, 10/12, 10/15, 10/16, 10/17, 10/18, 10/19, 10/22, 10/23, 10/24, 10/25, 10/26	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum and 5 1/2-inch maximum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	Noon - Midnight; Use of recovery box required	10/12, 10/17, 10/18, 10/19	6 1/4"
	Noon - Midnight	10/22, 10/23, 10/24, 10/25, 10/26, 10/29, 10/30, 10/31, 11/1, 11/2, 11/5, 11/6, 11/7, 11/8, 11/9, 11/12, 11/13, 11/14, 11/15, 11/16	6 1/4"

Note: In Areas 7 and 7A after September 30 but prior to October 20, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). It is unlawful to keep sockeye salmon in area 7, and 7A at all times.

7B:	6PM - 8AM	NIGHTLY 9/21	5"
	7AM 9/23 - 8PM 10/27		5"
	7AM 10/28 - 8PM 11/3		6 1/4"
	7AM 11/5 - 4PM 11/9		6 1/4"
	7AM 11/12 - 4PM 11/16		6 1/4"
	7AM 11/19 - 4PM 11/23		6 1/4"
	7AM 11/26 - 4PM 11/30		6 1/4"
	8AM 12/3 - 4PM 12/7		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December. It is unlawful to keep sockeye salmon in area 7B at all times.

8:	7AM - 7PM	11/5, 11/7, 11/9, 11/12, 11/14, 11/16, 11/19, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/26, 11/28, 11/30	6 1/4"
8A:	6PM - 8AM	NIGHTLY 10/9	5"
	7AM - 8PM	10/16, 10/18, 10/19	5"
	8AM - 8PM	10/23, 10/25, 10/26, 10/29, 10/31, 11/2	6 1/4"
	7AM - 7PM	11/6, 11/8, 11/9, 11/13, 11/15, 11/16, 11/21, 11/22, 11/23	6 1/4"
	7AM - 6PM	11/27, 11/29, 11/30	6 1/4"
8D:	6PM - 8AM	NIGHTLY 9/23, 9/25, 9/27, 9/30, 10/2, 10/4, 10/7, 10/9, 10/11	5"
	7AM - 8PM	10/18, 10/19	5"
	8AM - 8PM	10/25, 10/26, 11/1, 11/2	5"
	7AM - 7PM	11/8, 11/9	5"
	7AM - 7PM	11/15, 11/16, 11/21, 11/23	6 1/4"
	7AM - 6PM	11/29, 11/30	6 1/4"
9A:	6AM 9/26 - 7PM 11/3		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10, 11:	4PM - 7AM	NIGHTLY 10/15	6 1/4"
	5PM - 8AM	NIGHTLY 10/17, 10/18	6 1/4"
	4PM - 7AM	NIGHTLY 10/22, 10/24	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
	5PM - 8AM	NIGHTLY 10/25	6 1/4"
	3PM - 7AM	NIGHTLY 10/29	6 1/4"
	4PM - 8AM	NIGHTLY 10/31, 11/1	6 1/4"
	3PM - 7AM	NIGHTLY 11/5, 11/7	6 1/4"
	4PM - 8AM	NIGHTLY 11/8	6 1/4"
	3PM - 7AM	NIGHTLY 11/12	6 1/4"
	4PM - 8AM	NIGHTLY 11/14, 11/15	6 1/4"
	3PM - 7AM	NIGHTLY 11/19	6 1/4"
	3PM - 8AM	NIGHTLY 11/21, 11/22	6 1/4"
12A:	Closed -		
12, 12B:	8AM - 8PM	10/24, 10/25, 10/30, 11/1, 11/2	6 1/4"
	7AM - 7PM	11/7, 11/8, 11/14, 11/15, 11/20	6 1/4"
12C:	7AM - 7PM	11/13, 11/15, 11/20, 11/22	6 1/4"
	7AM - 6PM	11/26, 11/27	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-31100M	Purse seine—Open periods. (07-176)
WAC 220-47-41100P	Gill net—Open periods. (07-233)

#### **WSR 07-20-073 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 07-240—Filed September 28, 2007, 4:59 p.m., effective October 1, 2007, 7:00 a.m.]

Effective Date of Rule: October 1, 2007, 7:00 a.m.

Purpose: The purpose of this rule making is to allow 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, 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 220-33-01000R; 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 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steel-

head, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets first week of October fall fishing focusing on hatchery coho in the lower river. There are upriver bright and lower river hatchery fall chinook impacts and ESA-listed coho impacts available for this fishery. Very few lower river hatchery fall chinook (LRH) should be caught in this fishery, as the fish are in the tributaries or staging near the mouths where the commercial fishing sanctuaries are in place. The season is consistent with the 2005-2007 interim management agreement, the 2007 non-Indian salmon allocation agreement adopted for 2007. Regulation is consistent with compact action of July 26 and September 27, 2007. 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 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 1, Amended 0, Repealed 1.

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

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

Date Adopted: September 28, 2007.

J. P. Koenings  
Director

## NEW SECTION

**WAC 220-33-01000S 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. AREA: SMCRA 1A, 1B, 1C**

a. SEASON: 7:00 a.m. to 7:00 p.m. October 1, 2007

7:00 a.m. to 7:00 p.m. October 3, 2007

b. GEAR: 6-inch maximum mesh size, unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum

mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. 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.

c. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of seven 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 includes only mainstem fisheries. Green sturgeon retention is prohibited. 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 the department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

### **2. AREA: SMCRA 1A, 1B, 1C, 1D, 1E**

a. SEASON: 7:00 a.m. to 7:00 p.m. October 4, 2007

b. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. In the Columbia River downstream of Bonneville Dam and in the Select Areas (described in WAC 220-22-010(9)), a person may have onboard a commercial fishing vessel more than one licensed net, as long as the net or nets are of legal size for the fishery, or the net has a minimum mesh size of 9 inches, and the length of any one net does not exceed 1,500 feet in length. 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.

c. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy, Washougal.

d. ALLOWABLE SALE: Salmon and white sturgeon. A maximum of seven 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 includes only mainstem fisheries. Green sturgeon retention is prohibited. 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 the department rule.

e. OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of closure of the designated fishery.

### **3. Blind Slough/Knappa Slough Select Area.**

a. OPEN AREA: 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. 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 about a 100-foot radius at the mouth of Big Creek defined by markers. All waters in Knappa Slough are under concurrent jurisdiction.

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 6:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gillnet. Monofilament gear is allowed. 6-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

#### 4. Tongue Point/South Channel Select Area.

a. OPEN AREA: 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.

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, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel. All waters are under concurrent jurisdiction.

b. SEASON: Tuesday, Wednesday, and Thursday nights immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

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

b. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from immediately through October 26, 2007. Open hours are 7:00 p.m. to 7:00 a.m. through September 21 and 4:00 p.m. to 8:00 a.m. thereafter.

c. GEAR: Gill net. Monofilament gear is allowed. The mesh size is restricted to 6-inch maximum mesh. 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: Salmon and sturgeon. A maximum of five white sturgeon may be possessed or sold by each vessel participating each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes Select Area fisheries only. Green sturgeon retention is prohibited.

**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 6:59 a.m. October 1, 2007:

WAC 220-33-01000R Columbia River season  
below Bonneville. (07-235)

#### WSR 07-20-097

#### EMERGENCY RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 2, 2007, 11:30 a.m., effective October 2, 2007, 11:30 a.m.]

Effective Date of Rule: Immediately.

Purpose: Community and technical colleges are currently providing programs to at-risk/drop-out students under contract with the local school districts. The current rules created a bifurcation in colleges' program FTE reporting that is operationally confusing. This rule revision will create a uniform methodology of reporting student FTE for college programs.

Citation of Existing Rules Affected by this Order:  
Amending WAC 392-121-188.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Reasons for this Finding: This rule is being applied to the 2006-07 school year for school district and community college programs being operated now.

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 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 1, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 99-01, filed 3/25/99, effective 4/25/99)

**WAC 392-121-188 Instruction provided under contract.** School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control.

(5) The contractor serves the students at no cost to the student for tuition and fees and enrollment is voluntary and no student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

(6) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(7) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section.

(8) The curriculum is approved by the district;

(9) The contractor provides enrollment reports to the school district that comply with this chapter;

(10) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(11) If a contractor other than an institution of higher education at any time during the school year serves more than twenty-five students which equals more than one quarter of one percent (.0025) of the district's annual average full-time equivalent enrollment claimed for basic education funding the school district reports the certificated instructional employees of the contractor funded with any state moneys or federal moneys that flow through the school district as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(12) If the contract is with an entity other than an institution of higher education, for the students served pursuant to the contract, the contractor maintains a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade level of the students being reported for basic education funding pursuant to this section;

(13) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district;

(14) The school district and contractor establish a process for periodic on-site monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor;

(15) Contracts for services for students with disabilities shall comply with WAC 392-172-220 and 392-172-222;

(16) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(17) When a school district contracts for an alternative learning experience program and the contractor exercises primary responsibility for the student's written learning plan, the program shall be for academically at-risk students and shall comply with RCW 28A.150.305. Enrollment in these programs shall be reported pursuant to WAC 392-121-182.

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school;

or

(ii) The students have not demonstrated success in the traditional high school environment.