

WSR 08-20-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-241—Filed September 17, 2008, 1:57 p.m., effective September 18, 2008, 7:00 a.m.]

Effective Date of Rule: September 18, 2008, 7:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000R; 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets mainstem late fall commercial seasons. The seasons are consistent with the 2008-2017 interim management agreement and the 2008 non-Indian salmon allocation agreement. Harvestable salmon and sturgeon remain available. The regulation is consistent with compact action of July 22 and September 16, 2008. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries

Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: September 17, 2008.

Loreva M. Preuss
for Jeff 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. Mainstem Columbia River

a. SEASON: 7:00 a.m. to 7:00 p.m. September 18, 2008
7:00 a.m. to 7:00 p.m. September 25, 2008

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

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Effective after September 18, nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers, including all of the area from the upper boundary of

the Lewis-B sanctuary, downstream to a line projected from the red navigation marker 62 at the head of Deer Island, across to the green navigation marker 63 at Martin Island, Washington.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 12-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of the closure of each fishing period.

2. Mainstem Columbia River

a. SEASON: 7:00 p.m. September 21 to 7:00 a.m. September 22, 2008.

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

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

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers, including all of the area from the upper boundary of the Lewis-B sanctuary, downstream to a line projected from the red navigation marker 62 at the head of Deer Island, across to the green navigation marker 63 at Martin Island, Washington.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 12-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of closure of each fishing period.

3. Mainstem Columbia River

a. SEASON: 9:00 p.m. September 23 to 7:00 a.m. September 24, 2008.

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

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 12-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of closure of each fishing period.

4. Blind Slough/Knappa Slough Select Area.

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

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

c. GEAR: 8-inch maximum mesh size through September 5, and a 6-inch maximum mesh size thereafter. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed.

5. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, beginning immediately through October 26, 2008. Open hours are 7 p.m. to 7 a.m. through September 19, and 4:00 p.m. to 8:00 a.m. thereafter.

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

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

6. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights, beginning immediately through October 31, 2008. Open hours are 7 p.m. to 7 a.m. through September 19, and 4:00 p.m. to 8:00 a.m. thereafter.

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

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

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

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:00 a.m. September 18, 2008:

WAC 220-33-01000R Columbia River below Bonneville. (08-229)

WSR 08-20-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-242—Filed September 17, 2008, 3:58 p.m., effective September 17, 2008, 3:58 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Adopts an additional day of commercial gillnet to the fishery already in place. Continues to allow the sale of fish harvested during Yakama Nation fisheries. Harvestable numbers of fish are available under ESA guidelines. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compacts on July 24 and September 16, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

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

Columbia River fisheries are monitored very closely to ensure consistency with court orders and Endangered Species Act guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing

rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 17, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

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

1. Mainstem Columbia River

a) SEASON: Immediately to 6:00 p.m. September 19, 2008.

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

c) GEAR: 8-inch minimum mesh-size restriction on gill-nets.

2. Mainstem Columbia River

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

b) AREA: White Salmon, and Klickitat rivers.

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

4. Mainstem Columbia River below Bonneville Dam

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

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

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

5. SANCTUARIES: Standard Spring Creek sanctuary.

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

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

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

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

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

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

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

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

f) **Wind River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1-1/4 miles down-

stream from the west bank and 1/2-mile upstream from the east bank.

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

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100C	Columbia River salmon seasons above Bonneville Dam. (08-231)
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WSR 08-20-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-237—Filed September 18, 2008, 11:43 a.m., effective September 18, 2008, 11:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule, WAC 232-12-24300E, is to provide sufficient time for applicants of public-safety cougar-removal permits to obtain the licenses and tags

necessary to participate in the public-safety cougar-removal season.

Citation of Existing Rules Affected by this Order:
Amending WAC 232-12-243.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.15.245.

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

Reasons for this Finding: This emergency rule is needed to extend the public-safety cougar-removal application date from October 1, 2008, until October 17, 2008. The department delayed designating the game management units and permit numbers for the upcoming cougar-removal season, to extend the reporting period for public-safety situations involving cougars. The current application deadline of October 1, 2008, would prevent information gleaned from the extended reporting period from being used to plan and implement the cougar-removal program as required. There is insufficient time to promulgate permanent rules prior to the current deadline.

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 18, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

[NEW SECTION]

WAC 232-12-24300E Public safety cougar removals—Application date extension. Notwithstanding the provisions of WAC 232-12-243, applications for the public safety cougar removal 2008-2009 season will be accepted if postmarked no later than October 17, 2008.

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

WSR 08-20-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-243—Filed September 18, 2008, 2:39 p.m., effective September 22, 2008]

Effective Date of Rule: September 22, 2008.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

Date Adopted: September 18, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07100S Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective September 22, 2008 until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 1 on Monday, Tuesday and Wednesday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 2 on Monday, September 22, 2008 only.

(3) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on Monday-Wednesday, September 22-24, 2008 only.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 22, 2008:

WAC 220-52-07100R Sea cucumbers. (08-168)

WSR 08-20-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-244—Filed September 18, 2008, 4:43 p.m., effective September 20, 2008]

Effective Date of Rule: September 20, 2008.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. 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 232-28-61900V 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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.

The Upriver Bright (URB) run size has been upgraded and allowable impacts remain on the sport share of the ESA impacts. Under the *U.S. v. Oregon Management Agreement*, the allowable ESA rate for non-Indian fisheries is 11% under the URB and Snake River wild run sizes. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Date Adopted: September 18, 2008.

J. P. 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 a line projected from a boundary marker on the lower end of Bachelor Island across to the Warrior Rock Lighthouse upstream to Bonneville Dam: Effective September 20, 2008 through December 31, the salmon daily limit is six fish of which no more than two may be adults. Only 1 may be an adult Chinook. Any Chinook, fin clipped or not, may be retained. Minimum size 12 inches. Release wild coho, sockeye, and chum. Effective November 1, closed to fishing for salmon from Beacon Rock upstream to Bonneville Dam.

REPEALER

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

WAC 232-28-61900V Exceptions to statewide rules—Columbia River. (08-219)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2009:

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

WSR 08-20-021 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-245—Filed September 19, 2008, 2:01 p.m., effective September 22, 2008, 6:00 a.m.]

Effective Date of Rule: September 22, 2008, 6:00 a.m.

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

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

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

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

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Provides an additional week of treaty Indian commercial fishing. The Upriver Bright run has increased over the previous update, which allows the treaty tribes to harvest additional Upriver Bright chinook and Group B index steelhead under the management agreement. Continues to allow the sale of fish harvested during Yakama Nation fisheries. Harvestable numbers of fish are available under ESA guidelines. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on September 18, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

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

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

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

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

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

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

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

Date Adopted: September 19, 2008.

J. P. Koenings
Director

NEW SECTION

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

1. Mainstem Columbia River

a) SEASON: 6:00 a.m. September 22, to 6:00 p.m. September 26, 2008.

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

c) GEAR: 8-inch minimum mesh-size restriction on gill-nets.

2. Mainstem Columbia River

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

b) AREA: White Salmon, and Klickitat rivers.

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

4. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have

either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

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

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

5. **SANCTUARIES:** Standard river mouth and dam sanctuaries except the Spring Creek Hatchery sanctuary is defined as those waters of the Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway.

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

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

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

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

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

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

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

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

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

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad

tunnel approximately 1/8-miles downstream from the west bank.

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 22, 2008:

WAC 220-32-05100D	Columbia River salmon seasons above Bonneville Dam. (08-242)
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WSR 08-20-022 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-246—Filed September 19, 2008, 2:04 p.m., effective September 23, 2008, 7:00 a.m.]

Effective Date of Rule: September 23, 2008, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-41100X; 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: This is a coho directed fishery, and as marine area abundance of coho has diminished and encounters of ESA listed summer chum has significantly increased in the marine gill net fishery, it is necessary to close the season in the marine waters to nontreaty gill net fishing. 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 19, 2008.

J. P. Koenings
Director

NEW SECTION

WAC 220-47-41100X Gill net—Open periods. Notwithstanding the provisions of WAC 220-47-411, effective 7:00 a.m. September 23, 2008, until further notice, it is unlawful to take fish for or possess salmon taken for commercial purpose in Puget Sound Salmon Management and Catch Reporting Area 12A.

REPEALER

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

WAC 220-47-41100X Gill net—Open periods.

**WSR 08-20-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-248—Filed September 23, 2008, 3:50 p.m., effective September 23, 2008, 3:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000R and 232-28-62000S; and amending WAC 232-28-620.

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: Sufficient chinook remain in the quota for Marine Area 3 to continue at two chinook per day. 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 23, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-62000S Coastal salmon seasons. Notwithstanding the provisions of WAC 232-28-620, effective immediately through October 5, 2008, it is unlawful to fish for salmon in coastal waters except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Marine Area 1 - Closed.

(2) Marine Area 3 - Open north of 47°50'00"N latitude and south of 48°00'00"N latitude, special daily limit of two salmon of which two may be Chinook, except release wild coho.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000R Coastal salmon seasons. (08-215)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. October 6, 2008:

WAC 232-28-62000S Coastal salmon seasons.

WSR 08-20-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-247—Filed September 24, 2008, 3:14 p.m., effective September 24, 2008, 3:14 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-04000A; and amending WAC 220-52-040.

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. Pot limits adjust harvest rates to comply with allocation objectives in agreed-to 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 24, 2008.

Loreva M. Preuss
 for Jeff Koenings
 Director

NEW SECTION

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

(1) Dungeness crab pots may be deployed between 8:00 a.m. October 1, 2008 and 7:59 a.m. October 3, 2008 in Puget Sound waters from a vessel not designated on a person's Puget Sound crab license, provided that the primary or alternate operator designated on the license is on board the non-designated vessel ("barge" vessel), and provided that prior notice has been given as indicated below.

(2) The license owner must leave a telephone message at the LaConner district office, (360) 466-4345, extension 245, with the following information:

a) Name and license number of license owner.

b) Name of designated primary operator if different from license owner.

c) Name of alternate operator if used to deploy pots from a non-designated vessel.

d) Buoy brand number and number of pots to be deployed from a non-designated vessel.

e) Name and identification numbers (WN and/or Coast Guard) of the non-designated vessel.

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

(a) 20 pots per vessel in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 20 pots per vessel in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Kiapot Point on Travis Spit, Miller Peninsula.

(4) Effective 8:00 a.m. October 1, 2008 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Region 1 (which includes Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B), and 75 pots per license per buoy tag number in Crab Management Region 2 East (which includes Marine Fish Shellfish Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A-E)

The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection in Crab Management Area 1 and Crab Management Area 2 East.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04000A	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (08-233)
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WSR 08-20-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-249—Filed September 24, 2008, 3:17 p.m., effective September 25, 2008]

Effective Date of Rule: September 25, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 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: There are sufficient numbers of upriver bright fall chinook, and wild Snake River fall chinook, to expand the mainstem Columbia and Snake River fall chinook fisheries and their allowable ESA impacts. Therefore, a limited fall chinook fishery for marked hatchery chinook is available within allowable limits for potential impacts upon wild fish, to open this Snake River fishery. 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 24, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

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

(1) Effective September 25 through October 15, 2008, a person may fish for and possess salmon in waters of the Snake River from the Railroad Bridge crossing the Snake River about a half mile downstream of the mouth of the Tucannon River, upstream to the no-fishing zone below Little Goose Dam, and from the safety zone boundary above the dam, up to the boat launch approximately 1 mile upstream of Little Goose Dam (along the south shore). Daily limit of three hatchery Chinook salmon, of which only one may be an adult Chinook, and no more than two may be jacks. Minimum size 10 inches in length.

(a) All wild Chinook and all other salmon must be released.

(b) Barbless hooks only.

(c) Night closure is in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2008:

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

WSR 08-20-066 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-250—Filed September 24, 2008, 3:43 p.m., effective September 24, 2008, 3:43 p.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000S; and amending WAC 220-33-010.

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

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

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

Reasons for this Finding: Sets additional late fall commercial chinook seasons in Zones 4-5 to protect Lewis River fall chinook. The Upriver Bright run size has been upgraded to 212,500 at the mouth of the Columbia River, which allows non-Indian fisheries to harvest up to 11% of the run. The seasons are consistent with the 2008-2017 management agreement and the 2008 non-Indian salmon allocation agreement. Harvestable salmon and sturgeon remain available. The regulation is consistent with compact action of July 22 and September 23, 2008. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries. Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the Endangered Species Act, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: September 24, 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-33-0100T Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River

a. SEASON: 7:00 a.m. to 7:00 p.m. September 25, 2008

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

c. GEAR: 9-inch minimum mesh size. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. SANCTUARIES: Grays River, Elochomin-A, Abernathy, Cowlitz, Kalama-A, Lewis-B, Washougal and Sandy Rivers, including all of the area from the upper boundary of the Lewis-B sanctuary, downstream to a line projected from the red navigation marker 62 at the head of Deer Island, across to the green navigation marker 63 at Martin Island, Washington.

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 12-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 12 hours of the closure of each fishing period.

2. Mainstem Columbia River

a. SEASON:

7:00 p.m. September 24 to 7:00 p.m. September 25, 2008

7:00 p.m. September 25 to 7:00 p.m. September 26, 2008

7:00 p.m. September 28 to 7:00 p.m. September 29, 2008

7:00 p.m. September 29 to 7:00 p.m. September 30, 2008

7:00 p.m. September 30 to 7:00 p.m. October 1, 2008

7:00 p.m. October 1 to 7:00 p.m. October 2, 2008

7:00 p.m. October 2 to 7:00 p.m. October 3, 2008

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

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon. A maximum of ten (10) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies only to mainstem fisheries. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

f. OTHER: 12-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports

must be submitted within 12 hours of closure of each fishing period.

3. Blind Slough/Knappa Slough Select Area.

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

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

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

4. Tongue Point/South Channel Select Area.

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

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

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

5. Deep River Select Area.

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

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

c. GEAR: 6-inch maximum mesh. Gill net. Monofilament gear is allowed. Net length maximum of 100 fathoms, and no weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel.

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

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 220-33-01000S Columbia River below Bonnevile. (08-241)

WSR 08-20-067
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-251—Filed September 24, 2008, 3:48 p.m., effective September 25, 2008]

Effective Date of Rule: September 25, 2008.

Purpose: The purpose of this rule making is to allow nontreaty recreational fishing opportunity in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act. 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 2008-2017 *United States v. Oregon Management Agreement* (Aug. 12, 2008) (Doc. No. 2546), *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the 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.

The daily limit in the sport fishery below Bonneville Dam was increased to include two adult chinook. The upriver bright (URB) run size has been upgraded and allowable impacts remain on the sport share of the ESA impacts. Under the *U.S. v. Oregon Management Agreement*, the allowable ESA rate for non-Indian fisheries is 11% under the URB and Snake River wild run sizes. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Date Adopted: September 25 [24], 2008.

Loreva M. Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900D 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 a line projected from a boundary marker on the lower end of Bachelor Island across to the Warrior Rock Lighthouse upstream to Bonneville Dam: Effective September 25, 2008 through December 31, 2008 the salmon daily limit is six fish of which no more than two may be adults. Any Chinook, fin clipped or not, may be retained. Minimum size 12 inches. Release wild coho, sockeye, and chum. Effective November 1, closed to fishing for salmon from Beacon Rock upstream to Bonneville Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 25, 2008:

WAC 232-28-61900B Exceptions to statewide rules—Columbia River. (08-244)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 1, 2009:

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

WSR 08-20-079 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-253—Filed September 26, 2008, 2:06 p.m., effective September 27, 2008]

Effective Date of Rule: September 27, 2008.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; 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 hatchery may not achieve its egg take goal, thus requiring an expanded closure for adult chinook retention. Hatchery (adipose clipped) chinook jacks are returning in good numbers and remain available for harvest. 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 26, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 232-28-61900H Exceptions to statewide rules—Kalama River. Notwithstanding the provisions of WAC 232-28-619, effective September 27 through December 31, 2008, in waters of the Kalama River from boundary markers at the mouth upstream to the upper salmon hatchery, it is unlawful to retain adult Chinook salmon as part of the daily limit.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2009:

WAC 232-28-61900H Exceptions to statewide rules—Kalama River.

**WSR 08-20-080
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-254—Filed September 26, 2008, 3:23 p.m., effective September 26, 2008, 3:23 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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 the identified boat drawn for Puget Sound-authorized fisheries in Puget Sound Salmon Management and Catch Reporting Area 8A limited participation drawing. 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 26, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-47-31100T Purse seine—Open periods. Notwithstanding the provisions of WAC 220-47-311, it is permissible for the vessel Sea Pride to participate in a limited purse seine fishery in Puget Sound Salmon Management and Catch Reporting Area 8A.

<u>Dates</u>	<u>Times</u>
September 29, 2008	7:00 a.m. - 7:00 p.m.
October 6, 2008	7:00 a.m. - 7:00 p.m.

REPEALER

The following section of the Washington Administrative Code is repealed effective 7:01 p.m. October 6, 2008:

WAC 220-47-31100T Purse seine—Open periods.

WSR 08-20-082
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

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

Effective Date of Rule: October 1, 2008.

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

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

See Reviser's note below.

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

Statutory Authority for Adoption: RCW 26.23.035 and 74.20.330.

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 13, Repealed 0.

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

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

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

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

Date Adopted: September 18, 2008.

Stephanie E. Schiller
Rules Coordinator

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 08-21 issue of the Register.

WSR 08-20-083
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2008, 9:08 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The department is amending by emergency rule WAC 388-412-0015 and 388-450-0185 to implement annual adjustments to standards for the Washington Basic Food program. Changes include updates to the following standards for federal fiscal year 2009: Standard deduction, minimum monthly benefit and dependent care deduction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0015 and 388-450-0185.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.9 and 273.10.

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

Reasons for this Finding: The amendments need to be made via an emergency rule filing because federal implementation timeframes do not allow sufficient time to make the changes using the standard adoption process.

The department is concurrently working on the regular rule-filing process. A CR-101 was filed as WSR 08-13-055 and 08-03-095 and a CR-102 was filed on August 29, 2008, as WSR 08-18-050.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: September 23, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-016, filed 12/27/04, effective 1/27/05)

WAC 388-412-0015 General information about your Basic Food allotments. (1) Your monthly Basic Food benefits are called an allotment. An allotment is the total dollar value of benefits your eligible assistance unit (AU) gets for a calendar month.

- (2) You cannot receive the same type of benefit in:
 - (a) Two states in the same month;
 - (b) Two AUs in the same month, unless;
 - (c) You left the AU to live in a shelter for battered women and children. See WAC 388-408-0045.
- (3) If your AU does not have any countable net income, you get the maximum allotment for the number of eligible people in your AU. See WAC 388-478-0060 for the maximum allotments.
- (4) If your AU has countable net income under WAC 388-450-0162, we calculate, your allotment by:
 - (a) Multiplying your AU's countable net monthly income by thirty percent;
 - (b) Rounding this amount up to the next whole dollar; and
 - (c) Subtracting the result from the maximum allotment.
- (5) If we determine you are eligible for Basic Food, your first month's benefits are from the date you applied for benefits through the end of the month of your application. If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055. This is called proration and is based on a thirty-day month.
- (6) If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for Basic Food, we issue both your first and second months benefits in one allotment if you are eligible for both months.
- (7) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.
- (8) If your AU has one or two members, your monthly allotment will be at least ~~((ten))~~ fourteen dollars unless:
 - (a) It is the first month of your certification period;
 - (b) Your AU is eligible for only a partial month; and
 - (c) We reduced your first month's allotment below ~~((ten))~~ fourteen dollars based on the date you became eligible for Basic Food under WAC 388-406-0055.

AMENDATORY SECTION (Amending WSR 07-22-035, filed 10/30/07, effective 11/30/07)

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)) <u>144</u>
2	\$ ((134)) <u>144</u>

Eligible and ineligible
AU members

- | | |
|-----------|--|
| 3 | Standard deduction
\$ ((134)) <u>144</u> |
| 4 | \$ ((143)) <u>147</u> |
| 5 | \$ ((167)) <u>172</u> |
| 6 or more | \$ ((191)) <u>197</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))~~ needed for an AU member to:
 - ~~((a))~~ ~~((The dependent care must be needed for AU member to:~~
 - ~~((i))~~ Keep work, look for work, or accept work;
 - ~~((ii))~~ ~~((b))~~ Attend training or education to prepare for employment; or
 - ~~((iii))~~ ~~((c))~~ 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.

WSR 08-20-084
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2008, 9:10 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The department is proposing to amend WAC 388-444-0005 and 388-444-0040 to allow participants in the food stamp employment and training (FS E&T) program the option to volunteer to participate more than one hundred twenty hours per month.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0005 and 388-444-0040.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.903.

Other Authority: Food, Conservation and Energy Act of 2008.

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 department is giving participants in the FS E&T program the option to volunteer to participate more than one hundred twenty [hours] per month to match the allowance of this option in the Food, Conservation and Energy Act of 2008. The department is concurrently going through the regular rule-filing process for permanent adoption.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: September 23, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-125, filed 7/3/07, effective 8/3/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt, you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) (~~Your FS E&T activities including paid or unpaid work will not exceed one hundred twenty hours a month whether you are exempt or nonexempt~~) Exempt or nonexempt FS E&T participants will not be required to participate more than one hundred and twenty hours per month, but exempt or nonexempt FS E&T participants may volunteer to participate beyond one hundred and twenty hours.

AMENDATORY SECTION (Amending WSR 99-07-024, filed 3/10/99, effective 4/10/99)

WAC 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program. Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents.

(1) The following are considered work programs:

(a) Workfare consists of:

(i) Thirty days of job search activities in the first month beginning with the first day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows the client to remain eligible for food stamps. Workfare is not enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) is supervised, unpaid work for at least twenty hours a week. The work must be for a nonprofit agency or governmental or tribal entity. This work is to improve the work skills of the client.

(c) On-the-job training (OJT) is paid employment for at least twenty hours a week. It is job training provided by an employer at the employer's place of business and may include some classroom training time.

(2) The department may not **require you to participate** more than (~~(thirty hours a week of Workfare and paid work combined)~~) one hundred and twenty hours per month in a

work program, paid work, or a combination of activities. ABAWDs may volunteer to participate in activities beyond one hundred and twenty hours per month.

(3) The department may pay for some of a client's actual expenses needed for the client to participate in work programs. Standards for paying expenses are set by the department.

WSR 08-20-085
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 29, 2008, 9:12 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The department is amending by emergency rule WAC 388-450-0195 Utility allowances for Basic Food programs and 388-492-0070 How are my WASHCAP benefits calculated? Changes include updates to utility allowances, the standard income deduction, WASHCAP high cost shelter standard, and the minimum monthly benefit amount.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195 and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 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 amendment needs to be made via an emergency rule filing because federal implementation timeframes do not allow sufficient time to make the changes using the standard adoption process.

The department is concurrently working on the regular rule-filing process. A CR-101 was filed on June 12, 2008, as WSR 08-13-055 and a CR-102 was filed on August 20, 2008, as WSR 08-17-109.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: September 23, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

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;
- (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	\$((328)) <u>352</u>
2	\$((338)) <u>362</u>
3	\$((348)) <u>373</u>
4	\$((358)) <u>384</u>
5	\$((368)) <u>394</u>
6 or more	\$((378)) <u>405</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred ((~~fifty-nine~~)) seventy-six dollars.

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

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

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~~)) forty-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) Two hundred ((~~seventy-five~~)) eighty-four dollars or more a month for shelter, we use three hundred ((~~sixty-six~~)) seventy-nine dollars as your shelter cost; or

(b) Less than two hundred ((~~seventy-five~~)) eighty-four dollars for shelter, we use one hundred ((~~seventy-six~~)) eighty-two dollars as your shelter cost; and

(c) We add the current 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))~~ the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 08-20-086
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2008, 9:13 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The department is amending by emergency rule WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food and 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? The changes update income and deduction standards used for Basic Food and WASHCAP as required under regulations for the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0190 and 388-478-0060.

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

Other Authority: 7 C.F.R. 273.9.

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 amendment needs to be made via an emergency rule filing because federal implementation timeframes do not allow sufficient time to make the changes using the standard adoption process.

The department is concurrently working on the regular rule-filing process. A CR-101 was filed on June 12, 2008, as WSR 08-13-055 and a CR-102 was filed on August 29, 2008, as WSR 08-18-049.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: September 23, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-035, filed 10/30/07, effective 11/30/07)

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 ~~((thirty-one))~~ forty-six 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 ~~((thirty-one))~~ forty-six dollars.

AMENDATORY SECTION (Amending WSR 07-22-035, filed 10/30/07, effective 11/30/07)

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 ((10-1-2007)) 10-1-2008				
Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((1,107)) <u>1,127</u>	\$((851)) <u>867</u>	\$((162)) <u>176</u>	\$((1,404)) <u>1,430</u>
2	((1,484)) <u>1,517</u>	((1,141)) <u>1,167</u>	((298)) <u>323</u>	((1,883)) <u>1,925</u>
3	((1,861)) <u>1,907</u>	((1,431)) <u>1,467</u>	((426)) <u>463</u>	((2,361)) <u>2,420</u>
4	((2,238)) <u>2,297</u>	((1,721)) <u>1,767</u>	((542)) <u>588</u>	((2,840)) <u>2,915</u>
5	((2,615)) <u>2,687</u>	((2,011)) <u>2,067</u>	((643)) <u>698</u>	((3,318)) <u>3,410</u>
6	((2,992)) <u>3,077</u>	((2,301)) <u>2,367</u>	((772)) <u>838</u>	((3,797)) <u>3,905</u>
7	((3,369)) <u>3,467</u>	((2,591)) <u>2,667</u>	((853)) <u>926</u>	((4,275)) <u>4,400</u>
8	((3,746)) <u>3,857</u>	((2,881)) <u>2,967</u>	((975)) <u>1,058</u>	((4,754)) <u>4,895</u>
9	((4,123)) <u>4,247</u>	((3,171)) <u>3,267</u>	((1,097)) <u>1,190</u>	((5,233)) <u>5,390</u>
10	((4,500)) <u>4,637</u>	((3,461)) <u>3,567</u>	((1,219)) <u>1,322</u>	((5,712)) <u>5,885</u>
Each Additional Member	+((377)) <u>390</u>	+((290)) <u>300</u>	+((122)) <u>132</u>	+((479)) <u>495</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.

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

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

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

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

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

**WSR 08-20-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-252—Filed September 29, 2008, 3:08 p.m., effective September 30, 2008, 6:00 a.m.]

Effective Date of Rule: September 30, 2008, 6:00 a.m.

state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Sets an additional week of treaty Indian commercial fishing and allows sales of fish caught in Drano Lake by enrolled Yakama Nation tribal members. The upriver bright run is projected to be greater than the preseason forecast, which allows the treaty tribes to harvest additional upriver bright chinook and Group B index steelhead under the management agreement. Continues to allow the sale of fish harvested during Yakama Nation fisheries. Harvestable numbers of fish are available under ESA guidelines. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on September 29, 2008. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

New regulations for 2008 include fisheries that are described in the MOA between Washington state and Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes).

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

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

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

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

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

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

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

Date Adopted: September 29, 2008.

Joe Stohr
for Jeff Koenings
Director

NEW SECTION

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

1. Mainstem Columbia River

a) SEASON: 6:00 a.m. September 30, to 6:00 p.m. October 3, 2008.

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

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

2. Mainstem Columbia River

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

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

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

4. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam." and only for enrolled Yakama Nation members, and have

either commercial gillnet openings or allow platform gear in Zone 6 (SMCRA 1F, 1G, 1H).

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

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

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

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

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

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

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

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

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

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

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

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

g) **Klickitat River** are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing, downstream to a marker located near the railroad

tunnel approximately 1/8-miles downstream from the west bank.

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

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

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

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. September 30, 2008:

WAC 220-32-05100E	Columbia River salmon seasons above Bonneville Dam. (08-245)
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WSR 08-20-097

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 30, 2008, 6:29 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.

Purpose: The department is amending by emergency rule the following WACs: WAC 388-310-0500 WorkFirst—Individual responsibility plan, 388-310-0900 WorkFirst—Basic Education, 388-310-1000 WorkFirst—Vocational education, and 388-310-1050 WorkFirst—Skills enhancement training.

These amendments will enable the department to invoke new options under the final Deficit Reduction Act (DRA) and

to maximize the state's ability to meet the federal work participation rate.

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

Statutory Authority for Adoption: Chapter 74.08A RCW, RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.12 RCW.

Other Authority: 42 U.S.C. 601.

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 amendment needs to be made via an emergency rule filing because the final rule of the Deficit Reduction Act provides new options effective October 1, 2008, that will allow the department to avoid federal penalties and preserve program funding. The department is concurrently working on the regular rule-filing process and is in the process of filing a CR-101.

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 4, 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 4, Repealed 0.

Date Adopted: September 29, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) What is the purpose of my individual responsibility plan?

The purpose of your individual responsibility plan is to give you a written statement that describes:

- (a) What your responsibilities are; and
- (b) Which WorkFirst activities you are required to participate in; and
- (c) What services you will receive so you are able to participate.

(2) What is included in my individual responsibility plan?

Your individual responsibility plan includes the following:

(a) What WorkFirst activities you must do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and the requirement to participate fully.

(b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity or to provide proof of your employment hours.

(c) What services we will provide to help you participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(3) How is my individual responsibility plan developed?

You and your case manager will work together and use information gathered from your comprehensive evaluation (see WAC 388-310-0700) to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment.

(4) What happens after my individual responsibility plan is completed?

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report when possible to explain your situation, or as soon as possible thereafter. You will be given an excused absence. Some examples of excused absences include:

- (a) You, your children or other family members are ill;
- (b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;
- (c) A significant person in your life died; or
- (d) A family violence situation arose or worsened.

(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?

If you do not call in on the same day you are unable to attend when possible, or as soon as possible thereafter, to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-0900 WorkFirst—Basic education. (1) What is basic education?

Basic education is high school completion, classes to prepare for general equivalency diploma (GED), testing to acquire GED certification, adult basic education (ABE) or English as a second language (ESL) training. Basic education also includes ((supervised)) approved homework and study activities associated with the educational activity.

(2) When do I participate in basic education as part of WorkFirst?

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You are twenty years of age or older and your comprehensive evaluation shows you need this education to become employed or get a better job and:

(i) You are participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

(c) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.

(d) You are enrolled in the pregnancy to employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a baccalaureate or advanced degree unless otherwise indicated below, and is offered by an accredited:

(a) Public and private technical college or school;

(b) Community college;

(c) Tribal college; or

(d) For customized job skills training (formerly known as preemployment training), community based organizations.

(2) Vocational education may include:

(a) Customized job skills training;

(b) High-wage/high-demand training;

(c) ((Supervised)) Approved homework and study activities associated with the educational activity; and/or

(d) Remedial/developmental education, prerequisites, basic education and/or English as a second language training deemed a necessary part of the vocational education program.

(3) What is customized job skills training?

Customized job skills training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Customized job skills training is an acceptable activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete customized job skills training.

(b) You can find out about current customized job skills training opportunities by asking your employment services counselor, your case manager or staff at your local community and technical college.

(4) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage/high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program, not to exceed a baccalaureate degree, in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy).

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with WorkFirst staff during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

(5) When can vocational education be included in my individual responsibility plan?

We may add vocational education to your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows you need this education to become employed or get a better job and you participate full time in vocational education or combine vocational education with any approved WorkFirst work activity; or

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program; or

(c) You have limited English proficiency and you lack job skills that are in demand for entry level jobs in your area; and the vocational education program is the only way that you can acquire these skills (because there is no available

work experience, community service or on-the-job training that can teach you these skills); or

(d) You are in the pregnancy to employment pathway and your comprehensive evaluation shows vocational education would help you find and keep employment. (See WAC 388-310-1450.)

(6) Can I get help with paying the costs of vocational education?

WorkFirst may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1050 WorkFirst—Skills enhancement training. (1) What is skills enhancement training?

Skills enhancement training (formerly known as job skills training) is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) ((Supervised)) Approved homework and study activities.

(2) Who may provide skills enhancement training?

The training may be offered by the following types of organizations that meet the WorkFirst program's standards for service providers:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

(3) When can skills enhancement training be included in my individual responsibility plan?

We may add skills enhancement training in your individual responsibility plan if you are participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities.

(4) Can I get help with paying the costs of skills enhancement training?

WorkFirst may pay your costs, such as tuition or books, if skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may

also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

**WSR 08-20-106
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 08-255—Filed September 30, 2008, 9:44 a.m., effective October 6, 2008]

Effective Date of Rule: October 6, 2008.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: September 30, 2008.

Phil Anderson
for Jeff Koenings
Director

NEW SECTION

WAC 220-52-07300X Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective October 6, 2008 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

- (1) Green sea urchins: Sea Urchin Districts 1, 2, 3, 4, 6 and 7 are open only on Monday and Tuesday of each week.
- (2) Red sea urchins: Sea Urchin Districts 1 and 2 are open only on Monday through Friday of each week.
- (3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

WSR 08-20-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 08-256—Filed September 30, 2008, 10:42 a.m., effective October 1, 2008]

Effective Date of Rule: October 1, 2008.
 Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E; 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 Yakama Nation has federally reserved exclusive fishing rights on waters that border its reservation. At this time, the Yakama Nation has not waived their exclusive fishing rights that would allow the Washington department of fish and wildlife (WDFW) to open a non-tribal sport fishery on boundary waters of the Yakima River. As a result, WDFW is closing the state's sport fishery on the twenty-one mile section of the Yakima River that borders the Yakama Nation Reservation. 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 30, 2008.

Phil Anderson
 for Jeff Koenings
 Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Yakima River. Notwithstanding the provisions of WAC 232-28-619, effective October 1 through October 22, 2008, it is unlawful to fish for or possess salmon in waters of the Yakima River from the Highway 223 Bridge at Granger upstream to Sunnyside (Parker) Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 23, 2008:

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