

WSR 09-10-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-63—Filed April 22, 2009, 3:41 p.m., effective April 25, 2009, 12:01 a.m.]

Effective Date of Rule: April 25, 2009, 12:01 a.m.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 22, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

1. Effective 12:01 a.m. April 25 through 11:59 a.m. April 27, 2009, razor clam digging is allowed in Razor Clam Area 1, Razor Clam Area 2 and that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 27, 2009:

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

WSR 09-10-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-62—Filed April 22, 2009, 3:45 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000P; and amending WAC 220-24-040.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 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: April 22, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-24-04000P All-citizen commercial salmon troll. Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

May 1 through May 5, 2009;
 May 8 through May 12, 2009;
 May 16 through May 19, 2009;
 May 23 through May 26, 2009;
 May 30 through June 2, 2009;
 June 6 through June 9, 2009;
 June 13 through June 16, 2009;
 June 20 through June 23, 2009;
 June 27 through June 30, 2009.

(2) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

(3) Landing and possession limit of 75 Chinook per boat per entire open period for the entire catch areas 1, 2, 3 and 4 from May 1 through June 30

(4) Minimum size for Chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(5) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long., to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - The area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

(10) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon: and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(11) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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 effective July 2, 2009:

WAC 220-24-04000P All-citizen commercial salmon troll.

**WSR 09-10-010
 EMERGENCY RULES
 DEPARTMENT OF
 SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 24, 2009, 8:00 a.m., effective April 24, 2009, 8:00 a.m.]

Effective Date of Rule: Immediately.

Purpose: Recently passed federal legislation allows: (1) States, beginning April 1, 2009, to provide medicaid and state children's health insurance program coverage to legal immigrant children and pregnant women without the five-year delay from the time of their United States entry; and (2) Afghan special immigrants to be eligible for temporary assistance for needy families (TANF) and medicaid for up to eight months as allowed under federal law effective March 11, 2009.

Citation of Existing Rules Affected by this Order: Amending WAC 388-424-0006, 388-424-0010, and 388-424-0016.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.-120.

Other Authority: P.L. 111-3 (H.R. 2, Title II, Sec. 214 - Children's Health Insurance Program Reauthorization Act of 2009); P.L. No. 111-08 Omnibus Appropriations Act of 2009, Office of Refugee Resettlement State Letter #09-17.

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: Implementing this rule change will save the state money by allowing DSHS to draw down federal matching funds and will extend assistance to needy immigrant children, pregnant women, and Afghan immigrants. Given the current budget revenue crisis that is forcing the state to cut programs and services, implementing this change will allow the state to utilize the cost savings for other programs and services. This second emergency supersedes the first emergency filed as WSR 09-08-083 on March 30, 2009, due to the addition of the Afghan refugee provision.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: April 20, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-07-023, filed 3/9/07, effective 4/9/07)

WAC 388-424-0006 Citizenship and alien status—Date of entry. (1) A person who physically entered the U.S. prior to August 22, 1996 and who continuously resided in the U.S. prior to becoming a "qualified alien" (as defined in WAC 388-424-0001) is not subject to the five-year bar on TANF, nonemergency medicaid, and SCHIP.

(2) A person who entered the U.S. prior to August 22, 1996 but became "qualified" on or after August 22, 1996, or who physically entered the U.S. on or after August 22, 1996 and who requires five years of residency to be eligible for federal Basic Food, can only count years of residence during which they were a "qualified alien."

(3) A person who physically entered the U.S. on or after August 22, 1996 is subject to the five-year bar on TANF,

nonemergency medicaid, and SCHIP unless exempt. The five-year bar starts on the date that "qualified" status is obtained.

(4) The following "qualified aliens," as defined in WAC 388-424-0001, are exempt from the five-year bar:

- (a) Amerasian lawful permanent residents;
- (b) Asylees;
- (c) Cuban/Haitian entrants;
- (d) Persons granted withholding of deportation or removal;
- (e) Refugees;
- (f) Victims of trafficking who have been certified or had their eligibility approved by the office of refugee resettlement (ORR); and
- (g) Lawful permanent residents, parolees, or battered aliens, as defined in WAC 388-424-0001, who are also an armed services member or veteran as described in WAC 388-424-0007.

(5) In addition to subsection (4) of this section, the following "qualified aliens" are also exempt from the five-year bar on nonemergency medicaid and SCHIP:

- (a) Pregnant women;
- (b) Children under nineteen years of age; and
- (c) Children under twenty-one years of age who are residing in a medical institution as described in WAC 388-505-0230.

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-424-0010 Citizenship and alien status—Eligibility restrictions for ~~((the temporary assistance for needy families program and medical benefits, including))~~ TANF, nonemergency medicaid, and ~~((the children's healthcare programs))~~ SCHIP. (1) To receive TANF, non-emergency medicaid, or ~~((medical benefits))~~ SCHIP, you must meet all other eligibility requirements and be one of the following as defined in WAC 388-424-0001:

- (a) A U.S. citizen;
- (b) A U.S. national;
- (c) An American Indian born outside the U.S.;
- (d) A "qualified alien";
- (e) A victim of trafficking;
- (f) A Hmong or Highland Lao; or
- (g) A special immigrant from Iraq or Afghanistan eligible for eight months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status(~~(or~~
- ~~(h) A special immigrant from Afghanistan eligible for six months of federally funded assistance from your date of entry into the United States or from the date you received special immigrant status)).~~

(2) A "qualified alien" who first physically entered the U.S. before August 22, 1996 as described in WAC 388-424-0006(1) may receive TANF, nonemergency medicaid, and SCHIP (~~(benefits)~~).

(3) A "qualified alien" who first physically entered the U.S. on or after August 22, 1996 cannot receive TANF, non-emergency medicaid, or SCHIP for five years after obtaining status as a qualified alien unless:

(a) He or she is an alien as described (~~(under)~~) in WAC 388-424-0006(4); or

(b) He or she is an alien as described in WAC 388-424-0006(5) applying for nonemergency medicaid or SCHIP.

(4) An alien who is ineligible for TANF(~~(non-emergency medicaid, or SCHIP)~~) because of the five-year bar or because of their immigration status may be eligible for:

(a) Emergency benefits as described in WAC 388-436-0015 (consolidated emergency assistance program) and WAC 388-438-0110 (alien emergency medical program); or

(b) State-funded cash or chemical dependency benefits as described in WAC 388-424-0015 (SFA, GA and ADATSA) and medical benefits as described in WAC 388-424-0016; or

(c) Pregnancy medical benefits as described in WAC 388-462-0015; or

(d) Children's (~~(health program)~~) healthcare benefits as described in WAC 388-505-0210.

AMENDATORY SECTION (Amending WSR 04-15-004, filed 7/7/04, effective 8/7/04)

WAC 388-424-0016 Citizenship and alien status—Immigrant eligibility restrictions for state medical benefits. ~~((+))~~ To receive general assistance medical (medical care services) you must meet the alien requirements of general assistance as described in WAC 388-424-0015(2) and be a recipient of general assistance cash.

~~((2) To receive medical benefits for pregnancy, you must be ineligible for other programs as described in WAC 388-462-0015, verify you are pregnant, and be:~~

~~(a) A "qualified alien" who is ineligible for TANF due to the five-year bar as described in WAC 388-424-0006(3);~~

~~(b) PRUCOL as defined in WAC 388-424-0001; or~~

~~(c) An undocumented alien as defined in WAC 388-424-0001.)~~

WSR 09-10-011

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 24, 2009, 8:01 a.m., effective April 24, 2009, 8:01 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend, via emergency adoption WAC 388-466-0120 and 388-466-0130 in order to allow Afghan special immigrants to be eligible for refugee medical assistance (RMA) and refugee cash assistance (RCA) for up to eight months. These changes must be implemented immediately to comply with Public Law No. 111-08 the Omnibus Appropriation[s] Act, 2009, Division F, Section 602, and new federal guidance issued by the Office of Refugee Resettlement in State Letter 09-17.

Citation of Existing Rules Affected by this Order: Amending WAC 388-466-0120 and 388-466-0130.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, and 74.08.090.

Other Authority: P.L. No. 111-08 Omnibus Appropriations Act of 2009, Office of Refugee Resettlement State Letter #09-17.

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: To extend the duration of eligibility of Afghan special immigrants for public assistance benefits from six to eight months from date of entry into the United States or date of adjustment to special immigrant status, as required by the Office of Refugee Resettlement State Letter #09-17 (under the Omnibus Appropriations Act of 2009). Because the change went into effect March 11, 2009, and there is no provision for retroactive benefits for those whose benefits have already expired, it is essential to pursue emergency rule along with normal rule adoption.

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: April 17, 2009.

Stephanie E. Schiller, Coordinator
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0120 Refugee cash assistance (RCA). (1) Who can apply for refugee cash assistance (RCA)?

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) How do I know if I qualify for RCA?

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) What are the other reasons for not being eligible for RCA?

You may not get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) Does getting a one time cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) What is the effective date of my eligibility for RCA?

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) When does my RCA end?

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered

the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

~~(b) ((If you are from Afghanistan and were granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RCA ends on the last day of the sixth month starting from the month of your arrival to the United States or from the month you received special immigrant status if this occurred after your entry.~~

~~(e))~~ If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) Are there other reasons why RCA may end?

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States. ~~((Spouses from Afghanistan who have been granted special immigrant status under section 101 (a)(27) of the INA, are eligible for RCA for up to six months from the date of their entry into the United States or from the month they received special immigrant status if this occurred after their U.S. entry.))~~

(b) If you live together you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA is determined based on your and your spouse's combined income and resources (WAC 388-466-0140).

(11) Can I get additional money in an emergency?

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) What can I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or a fair hearing (WAC 388-02-0090). Your request must be made within ninety days of the decision or action.

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0130 Refugee medical assistance (RMA). (1) Who can apply for refugee medical assistance?

Anyone can apply for refugee medical assistance (RMA) and have eligibility determined by the department of social and health services (DSHS).

(2) Who is eligible for refugee medical assistance?

(a) You are eligible for RMA if you meet all of the following conditions:

(i) Immigration status requirements of WAC 388-466-0005;

(ii) Income and resource requirements of WAC 388-466-0140;

(iii) Monthly income standards up to two hundred percent of the federal poverty level (FPL). Spenddown is available for applicants whose income exceeds two hundred percent of FPL (see WAC 388-519-0110); and

(iv) Provide the name of the voluntary agency (VOLAG) which helped bring you to this country, so that DSHS can promptly notify the agency (or sponsor) about your application for RMA.

(b) You are eligible for RMA if you:

(i) Receive refugee cash assistance (RCA) and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210; or

(ii) Choose not to apply for or receive RCA and are not eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210, but still meet RMA eligibility requirements.

(3) Who is not eligible for refugee medical assistance?

You are not eligible to receive RMA if you are:

(a) Already eligible for medicaid or children's healthcare programs as described in WAC 388-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a department-approved individual responsibility plan (IRP);

(c) A nonrefugee spouse of a refugee.

(4) If I have already received a cash assistance grant from voluntary agency (VOLAG), will it affect my eligibility for RMA?

No. A cash assistance payment provided to you by your VOLAG is not counted in determining eligibility for RMA.

(5) If I get a job after I have applied but before I have been approved for RMA, will my new income be counted in determining my eligibility?

No. Your RMA eligibility is determined on the basis of your income and resources on the date of the application.

(6) Will my sponsor's income and resources be considered in determining my eligibility for RMA?

Your sponsor's income and resources are not considered in determining your eligibility for RMA unless your sponsor is a member of your assistance unit.

(7) How do I find out if I am eligible for RMA?

DSHS will send you a letter in both English and your primary language informing you about your eligibility. DSHS will also let you know in writing every time there are any changes or actions taken on your case.

(8) Will RMA cover my medical expenses that occurred after I arrived in the U.S. but before I applied for RMA?

You may be eligible for RMA coverage of your medical expenses for three months prior to the first day of the month

of your application. Eligibility determination will be made according to medicaid rules.

(9) If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RMA?

You are eligible for RMA to the same extent as a refugee, if you are:

(a) An adult victim, eighteen years of age or older, and you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS). You also have to meet eligibility requirements in subsections (2)(a) and (b) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter.

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements.

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet eligibility requirements in subsections (2)(a) and (b) of this section.

(10) If I am an asylee, what date will be used as an entry date?

If you are an asylee, your entry date will be the date that your asylum status is granted. For example, if you entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and granted asylum on September 1, 2000, your date of entry is September 1, 2000. On September 1, 2000 you may be eligible for refugee medical assistance.

(11) When does my RMA end?

(a) Your refugee medical assistance will end on the last day of the eighth month from the month of your entry into the United States. Start counting the eight months with the first day of the month of your entry into the U.S. For example, if you entered the U.S. on May 28, 2000, your last month is December 2000.

~~((b) If you are from Afghanistan and were granted Special Immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), your RMA ends on the last day of the sixth month starting with the month of your arrival to the United States or from the month you received Special Immigrant status if this occurred after your U.S. entry.))~~

(12) What happens if my earned income goes above the income standards?

(a) If you are getting RMA, your medical eligibility will not be affected by the amount of your earnings;

(b) If you were getting medicaid and it was terminated because of your earnings, we will transfer you to RMA for the rest of your RMA eligibility period. You will not need to apply.

(13) Will my spouse also be eligible for RMA, if he/she arrives into the U.S. after me?

When your spouse arrives in the U.S., we will determine his/her eligibility for medicaid and other medical programs.

(a) Your spouse may be eligible for RMA; if so, he/she would have a maximum of eight months of RMA starting on the first day of the month of his/her arrival.

~~((b) Spouses from Afghanistan who have been granted special immigrant status under section 101 (a)(27) of the Immigration and Nationality Act (INA), are eligible for RMA for a maximum of six months from the date of entry into the United States or from the month they received special immigrant status if this occurred after their U.S. entry-))~~

(14) What do I do if I disagree with a decision or action that has been taken by DSHS on my case?

If you disagree with the decision or action taken on your case by department you have the right to request a review of your case or request a fair hearing (see WAC 388-02-0090). Your request must be made within ninety days of the decision or action).

(15) What happens to my medical coverage after my eligibility period is over?

We will determine your eligibility for other medical programs. You may have to complete an application for another program.

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

WSR 09-10-012

EMERGENCY RULES

FOREST PRACTICES BOARD

[Filed April 24, 2009, 8:46 a.m., effective April 30, 2009]

Effective Date of Rule: April 30, 2009.

Purpose: This rule affects northern spotted owl habitat conservation. The forest practices board readopted an emergency rule to establish a temporary process (from January 1, 2009, to December 31, 2009) in which a three-person spotted owl conservation advisory group may evaluate certain northern spotted owl sites to determine whether they need be maintained while the forest practices board completes its evaluation of rules affecting the northern spotted owl. A previous emergency rule was effective January 1, 2009. The board is concurrently conducting permanent rule making to enact this process.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010 and 222-16-080(6).

Statutory Authority for Adoption: RCW 76.09.040.

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 board is working toward a long-term strategy for spotted owl conservation. The creation of the interim spotted owl advisory group (see Purpose above) is to ensure there is a thorough analysis prior to any decision regarding the maintenance of spotted owl site centers, i.e., forest lands currently designated as spotted owl habitat.

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 2, 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: February 11, 2009.

Peter Goldmark

Chair

AMENDATORY SECTION (Amending WSR 08-17-092, filed 8/19/08, effective 9/19/08)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the pres-

ence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

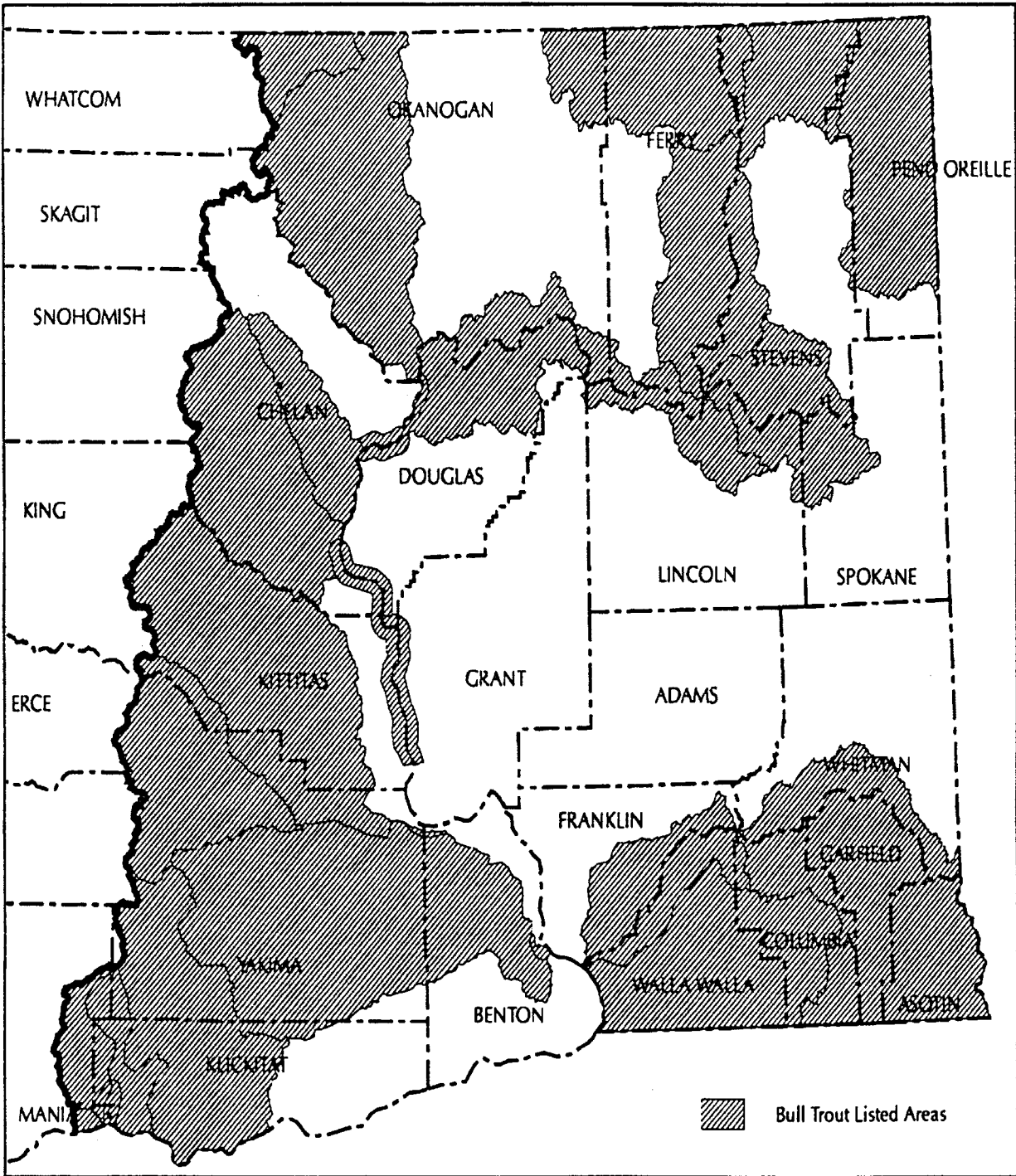
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See

board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are

broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consist-

ing of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bank-

full width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given

year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel

water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

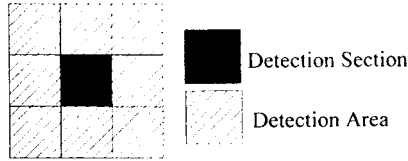
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means((:

~~(1) Until December 31, 2008, the location of northern spotted owls:~~

~~(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or~~

~~(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.~~

~~(2) After December 31, 2008,)) the location of status 1, 2 or 3 northern spotted owls based on the following definitions:~~

- Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or
- (c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy

machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'

Site Class	Western Washington Total RMZ Width
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100*
IV	75' or 100*
V	75' or 100*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel

migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"**Small forest landowner long-term application**" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"**SOSEA goals**" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl conservation advisory group**" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation.

"**Spotted owl dispersal habitat**" see WAC 222-16-085(2).

"**Spotted owl special emphasis areas (SOSEA)**" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"**Stop work order**" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"**Stream-adjacent parallel roads**" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"**Sub-mature habitat**" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84-33.035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-

060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes

"soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"**Windthrow**" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"**Yarding corridor**" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"**Young forest marginal habitat**" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-16-080 Critical habitats (state) of threatened and endangered species. (1) Critical habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Bald eagle (*Haliaeetus leucocephalus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of January 1 and August 15 or 0.25 mile at other times of the year; and within 0.25 mile of a communal roosting site. Communal roosting sites shall not include refuse or garbage dumping sites.

(b) Gray wolf (*Canis lupus*) - harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(c) Grizzly bear (*Ursus arctos*) - harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(d) Mountain (woodland) caribou (*Rangifera tarandus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(e) Oregon silverspot butterfly (*Speyeria zerene hippolyta*) - harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(f) Peregrine falcon (*Falco peregrinus*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.5 mile of a known active nest site, documented by the department of fish and wildlife, between the dates of March 1 and July 30; or harvesting, road construction, or aerial application of pesticides within 0.25 mile of the nest site at other times of the year.

(g) Sandhill crane (*Grus canadensis*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(h) Northern spotted owl (*Strix occidentalis caurina*)

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in (h)(ii) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086(2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls.

(i) Western pond turtle (*Clemmys marmorata*) - harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of wildlife.

(j) Marbled murrelet (*Brachyramphus marmoratus*)

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior or Commerce, or specific forest practices within those habitats, have been determined to have the potential for a substantial impact on the environment and therefore are designated as critical habitats (state) of threatened or endangered species.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior or Commerce, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical habitats (state) of threatened or endangered species. This list shall be submitted to the board within 30 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior or Commerce which have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for inclusion in Class IV - Special forest practices. The department shall submit the list to the board within 30 days of the date the United States Secretary of the Interior or Commerce publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats included by the board in Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b).

(5)(a) Except for bald eagles under subsection (1)(a) of this section, the critical habitats (state) of threatened and endangered species and specific forest practices designated in subsections (1) and (2) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission and by the United States Secretary of Interior or Commerce.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and

recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV-Special based on critical habitat (state) (WAC 222-16-080 WAC 222-16-050 (1)(b)) for a species, if the forest practices are consistent with one or more of the following:

(a) Documents addressing the needs of the affected species provided such documents have received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:

(i) A habitat conservation plan and incidental take permit; or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. § 1536(b) or 1539(a); or

(ii) An "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(iii) Other conservation agreement entered into with a federal agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species; or

(iv) A rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for the conservation of an affected species pursuant to 16 U.S.C. section 1533(d); or

(b) Documents addressing the needs of the affected species so long as they have been reviewed under the State Environmental Policy Act;

(i) A landscape management plan; or

(ii) Another cooperative or conservation agreement entered into with a state resource agency pursuant to its statutory authority for fish and wildlife protection;

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A bald eagle management plan approved under WAC 232-12-292;

(e) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1);

(f) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105; or

(g) A take avoidance plan issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to March 20, 2000;

(h) From January 1, 2009, through December 31, 2009, surveys demonstrating the absence of northern spotted owls

at a northern spotted owl site center have been reviewed and approved by the department of fish and wildlife and all three of the following criteria have been met:

(i) The site has been evaluated by the spotted owl conservation advisory group; and

(ii) As part of the spotted owl conservation advisory group's evaluation, the department's representative has consulted with the department of fish and wildlife; and

(iii) The spotted owl conservation advisory group has reached consensus that the site need not be maintained while the board completes its evaluation of rules affecting the northern spotted owl. The spotted owl conservation advisory group shall communicate its findings to the department in writing within sixty days of the department of fish and wildlife's approval of surveys demonstrating the absence of northern spotted owls.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more of the factors listed in WAC 222-16-050(1), other than critical habitat (state) for the species covered by the existing plan.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

WSR 09-10-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-64—Filed April 24, 2009, 9:29 a.m., effective April 24, 2009, 9:29 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-07100X.

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: Sea cucumber quota share amounts for harvest management year 2008-2009 have been

fully utilized. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 24, 2009.

Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-52-07100X Sea cucumbers. (09-49)

WSR 09-10-016
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed April 24, 2009, 1:58 p.m., effective April 24, 2009, 1:58 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend chapter 246-296 WAC, Drinking water state revolving fund loan program. Amend chapter 246-296 WAC, Drinking water state revolving fund (DWSRF) loan program. On March 6, 2009, the department of health adopted emergency rules as WSR 09-07-024 to include criteria for water systems to obtain a loan as provided in the federal American Recovery and Reinvestment Act of 2009 (ARRA). Since that time, the employment security department has adopted a new distressed county list. The changes adopted with this emergency order adopt the employment security department's April 17, 2009, distressed county list, and clarify that a loan with principal forgiveness may be awarded for "at least" one-half of the loan amount.

Citation of Existing Rules Affected by this Order:
 Amending WAC 246-296-020.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: American Recovery and Reinvestment Act of 2009.

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 Administrative Procedure Act allows the department to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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; or

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule, the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

The new federal law, the ARRA, requires immediate adoption of a rule for the DWSRF program, as described below.

With the national economic recession, the federal government has created a stimulus program through the ARRA that appropriates additional funds to the DWSRF, with a preference for quick-start activities that maximize job creation and economic benefit. The ARRA process generally fits within Washington state's DWSRF process, but contains a number of special requirements that are only applicable to this funding. The state must assure that our requirements align with these requirements in order to receive this funding. Some of the ARRA requirements are not covered under or are not consistent with our current state rule. For example, the ARRA requires that projects be ready to proceed within twelve months of the effective date of the ARRA in order to be eligible for funding. It further requires that states provide subsidization to eligible recipients in the form of principal forgiveness, negative interest loans or grants or a combination of these for at least 50% of the federal capitalization grant, and establishes a requirement that 20% of the funds be used for eligible green projects. The ARRA also includes a preference for projects that can begin with[in] one hundred twenty days of the effective date of act. The current [DW]SRF rules establish eligibility, priority and selection criteria for loans, but do not define readiness to proceed as an eligibility criterion. Further, they do not identify any form of funding other than loans with principal repayment, nor do they address funding of green projects. In order to meet our subsidy quota, the recently adopted distressed areas list established by the state employment security department on April 17, 2009, must be adopted in order to allow for subsidies in currently distressed counties which now includes Clark County. We are also clarifying that a loan with principal forgiveness may be awarded for "at least" one-half of the loan amount.

The necessary rule changes must be in place prior to awarding the economic stimulus funds. The quick start provisions of the ARRA require that the application and award process happen very quickly. The federal agency that administers the capitalization grants, the Environmental Protection

Agency, has asked the states to expedite the process in order to help selected project applicants meet the ARRA-imposed construction deadlines. One of the initial steps in the process of awarding funds is publication for review and comment of a draft intended use plan (IUP) that includes a list of fundable projects. IUPs are required for all DWSRF grants, as part of a public review process. The department will publish the draft IUP in April in order to address the quick start requirements. The expedited timelines imposed by the ARRA do not allow use of the normal rule-making process. Therefore, an emergency rule is necessary in order to meet the requirements of the federal stimulus legislation.

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

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

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

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

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

Date Adopted: April 24, 2009.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions. "Act" means the Federal Safe Drinking Water Act (SDWA).

"Application" means a DWSRF loan application submitted to DOH for DWSRF assistance.

"Application package" means DWSRF loan application form(s), requirements, terms of assistance, and related information jointly developed and published by DOH, the board, and the board's agent, CTED.

"Binding commitment" means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.

"Board" means the state of Washington public works board.

"Borrower" means the entity or individual that has the legal and financial responsibility for the loan.

"Certification/certify" means documentation signed by the loan recipient that specific requirements or standards have been or will be met.

"Change orders" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

"Community water system" means any Group A public water system that regularly serves fifteen or more year-

round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.

"Construction documents" means construction documents developed and approved under WAC 246-290-120.

"Construction completion report" means a form provided by DOH to the applicant required to be completed for each specific construction project to document project construction in accordance with chapter 246-290 WAC and general standards of engineering practice. The completed form must be stamped with an engineer's seal, signed, and dated by a professional engineer.

"Cross-cutting authorities" means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.

"CTED" means the department of community, trade and economic development.

"Debt obligation" means a legal obligation or liability to pay something to someone else.

"Default" means failure to meet a financial obligation such as a loan payment.

"Disadvantaged community" means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.

"Distressed county" means a county that is designated by the Washington state employment security department as distressed as of April 17, 2009.

"DOH" means the department of health.

"Drinking water state revolving fund (DWSRF)" means the program established to administer the federal funds and other funds deposited in the account authorized to finance water system infrastructure, drinking water program activities, and to meet the applicable requirements of RCW 70.119A.170.

"Eligible system" means Group A community water systems, both privately and publicly owned, and nonprofit Group A noncommunity water systems.

"EPA" means the United States Environmental Protection Agency.

"Group A system" means a public water system that regularly serves fifteen or more residential connections, or twenty-five or more people per day for sixty or more days per year.

"Group B system" means a public water system that serves less than fifteen residential connections and less than twenty-five people per day, or serves twenty-five or more people per day for sixty or fewer days per year.

"Individual water supply system" means any water system that is not subject to the state board of health drinking water regulations, chapter 246-290 WAC; or chapter 246-291 WAC, providing water to one single-family residence, or four or fewer connections all of which serve residences on the same farm.

"Intended use plan (IUP)" means the federally required document prepared each year by the state which identifies the intended uses of the funds in the DWSRF and describes how those uses support the goals of the DWSRF.

"HUD" means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the ~~((principle))~~ principal sum to the DWSRF except when the funds are provided in the form of a loan on which all or some of the principal is forgiven.

"Multiple benefit" means project improvements that address more than one type of health risk.

"Noncommunity water system" means a Group A public water system that is not a community water system.

"Nonprofit organization" means a system that has a federal tax exempt status identification number.

"Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.

"Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

"Project report" means a project report developed and approved under chapter 246-290 WAC.

"Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances excluding systems serving only one single-family residence and systems with four or fewer connections all of which serve residences on the same farm.

"Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities.

"Regional benefit" means project improvements that affect more than one public water system.

"Restructuring" means changing system operation, management and/or ownership, including, but not limited to:

- (1) Mergers;
- (2) Voluntary transfer of ownership; or
- (3) Receivership (involuntary transfer of operation and/or ownership).

"Safe Drinking Water Act (SDWA)" means the Federal Safe Drinking Water Act, including all amendments.

"Satellite management agency (SMA)" means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.

"Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities as authorized in Section 1452 of the SDWA, to fund new programs, and other drinking water program activities.

"Significant noncomplier (SNC)" means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

"Small water system management program (SWSMP)" means a small water system management program developed and approved under WAC 246-290-105.

"State environmental review process (SERP)" means the environmental review process conducted on all DWSRF projects that ensures compliance with state and federal environmental review through a National Environmental Policy Act (NEPA)-like process.

"State match" means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set-asides.

"Surface water" means a body of water open to the atmosphere and subject to surface runoff.

"System capacity" means the system's operational, technical, managerial and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

"Transfer of ownership" means to convey ownership of a water system from one person or entity to another.

"Transient noncommunity system" means a Group A noncommunity water system that serves:

(1) Twenty-five or more different people per day during sixty or more days per year;

(2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or

(3) One thousand or more people for two or more consecutive days.

"Water facilities inventory form (WFI)" means the DOH form summarizing each public water system's characteristics.

"Water right" means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

"Water system plan (WSP)" means a water system plan developed and approved under WAC 246-290-100.

NEW SECTION

WAC 246-296-185 Implementation of the American Recovery and Reinvestment Act of 2009. (1) Purpose and intent.

(a) The purpose of this section is to implement the requirements of the American Recovery and Reinvestment Act of 2009 (ARRA).

(b) The DWSRF rules in this chapter apply to the ARRA funds except as otherwise provided in this section. If a conflict exists between the rules in this chapter and the ARRA, the ARRA shall control.

(2) Provision of funds.

(a) Notwithstanding the requirements of section 1452(f) of the Safe Drinking Water Act, 42 U.S.C. Sec. 300j-12(f), the state will provide at least fifty percent of the amount of the federal grant to provide additional subsidization to eligible recipients in the form of forgiveness of principal.

(b) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may bypass higher priority projects in the final project selection if necessary to meet the requirement in (a) of this subsection.

(c) To the extent there are sufficient eligible applications, the state will provide at least twenty percent of the

funds for green projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities.

(d) In addition to the criteria identified in WAC 246-296-140, the board, in consultation with DOH, may bypass higher priority projects in the final project selection if necessary to meet the requirement in (c) of this subsection.

(3) Qualification for principal forgiveness.

(a) If the water system is located in a disadvantaged community, a project may be awarded a loan with principal forgiveness for the entire loan amount.

(b) If the project does not fall under (a) of this subsection, and the water system is located in a distressed county, the project may be awarded a loan with principal forgiveness for at least one-half of the loan amount.

(c) If the project does not fall under (a) or (b) of this subsection, it may be awarded a low interest loan.

(4) Readiness to proceed. In addition to the minimum eligibility requirements in WAC 246-296-100, only projects that are ready to begin construction by February 16, 2010, are eligible for assistance from ARRA funds.

(5) Priority. In addition to the priority ranking criteria identified in WAC 246-296-130, DOH may give priority to projects that can be initiated not later than June 16, 2009.

(6) Loan fee. A loan fee of one percent will be charged on all loans including those loans on which all, some or none of the principal is forgiven.

(7) Default. If CTED terminates the loan under WAC 246-296-150(5), the recipient shall immediately pay back the entire remaining loan balance.

(8) Notwithstanding WAC 246-296-070 (2)(c), ARRA funds shall not be used to retroactively finance projects.

(9) Notwithstanding WAC 246-296-080(10), ARRA funds may be used to fund service meter projects if such projects are needed to satisfy subsection (2)(d) of this section.

(10) Notwithstanding WAC 246-296-100(2), an approved water system plan or SWSMP is not required prior to loan execution, but completion, submittal, and DOH approval of a water system plan or SWSMP, whichever is applicable, containing the proposed project and addressing any capacity-related deficiencies shall be required as a part of the loan contract.

(11) Notwithstanding WAC 246-296-130 (1)(b)(ii) through (iv), DOH will not apply restructuring, regional benefit or multiple benefit as criteria when prioritizing projects for ARRA funds.

**WSR 09-10-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-65—Filed April 28, 2009, 3:55 p.m., effective April 28, 2009, 3:55 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend fishing rules.

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

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 rule conforms to federal action taken by the Pacific Fisheries Management Council. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 28, 2009.

Philip Anderson
Director

NEW SECTION

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

(1) Catch Record Card Area 1 - Open May 1, 2009 until further notice, Thursdays through Saturdays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) Catch Record Card Area 2 - Open May 3 through May 12, 2009, Sundays and Tuesdays only. Open May 17, 2009, until further notice, Sundays only.

(i) Catch Record Card Area 2 (Northern Nearshore fishery) Those waters from 47°25.00'N. latitude (Queets River) south to 46°58.00'N latitude and east of 124°30.00'W longitude, open Thursdays through Sundays and Tuesdays only during the primary season through May 12 and Thursday through Sundays only beginning May 17, 2009. After the primary season the northern nearshore fishery is open Thursdays through Sundays only.

(3) Catch Record Card Areas 3 and 4 - Open May 14 through May 23, 2009, Thursdays and Saturdays only, except closed May 28 through May 30, 2009.

(4) Catch Record Card Area 5 - Open May 21 through July 3, 2009, Thursdays through Mondays only.

(5) Catch Record Card Areas 6 through 11 and 13 - Open through June 5, 2009, Thursdays through Mondays only.

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

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-25500P Halibut—Seasons—Daily and possession limits. (09-57)

WSR 09-10-033

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed April 29, 2009, 1:02 p.m., effective April 29, 2009, 1:02 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: As required by RCW 34.05.350, the department finds that the immediate amendment of WAC 458-30-200 is necessary for the preservation of the public health, safety, or general welfare, and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Purpose: WAC 458-30-200 provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The department has amended WAC 458-30-200 on an emergency basis to clarify that:

(1) It is not necessary to breed animals to qualify for the "farm and agricultural land" classification; and

(2) The sale of forage through the grazing of livestock, including equines, constitutes the sale of an agricultural product for purposes of chapter 84.34 RCW.

The changes reflected in this rule are the same as those in the emergency rule adopted on December 31, 2008 (WSR 09-02-042).

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-200 Definitions.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.34.141, 84.34.020, and chapter 84.34 RCW.

Other Authority: RCW 34.05.350.

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: Since November 14, 2008, at the request of the department of revenue, assessors and treasurers have delayed the involuntary removal of property from the "farm and agricultural land" classification to allow the

department time to amend WAC 458-30-200 to address (1) the exclusion of land used for raising calves or piglets that are purchased rather than bred onsite and (2) the inconsistent classification of horse boarding operations among counties. The department amended WAC 458-30-200 on an emergency basis on December 31, 2008 (WSR 09-02-042) to assure that counties may timely complete their classification, assessment, collection and enforcement procedures, while assuring equal treatment for similarly situated taxpayers and the preservation of farmland intended to be preserved under Washington's Open Space Taxation Act.

Legislation in this area was also introduced during the 2009 session. The legislature passed SHB 1733, which has been delivered to the governor for possible signing into law. This legislation expands the statutory definition of "farming and agricultural land" to include land put to specific equestrian-related uses. The department anticipates proceeding with rule making to amend the permanent WAC 458-30-200 consistent with SHB 1733, assuming the bill is signed into law. If the bill is not signed into law, the department will proceed with amending the permanent rule based on current law. A second emergency rule is needed at this time to assure equal treatment for similarly situated taxpayers and the preservation of farmland intended to be preserved under Washington's Open Space Taxation Act.

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 1, Repealed 0.

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

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

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

Date Adopted: April 29, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-20-041, filed 9/24/02, effective 10/25/02)

WAC 458-30-200 Definitions. (1) **Introduction.** This ~~(rule)~~ section provides definitions for the terms used in conjunction with land classified under the Open Space Taxation Act, codified as chapter 84.34 RCW. The terms listed in this ~~(rule)~~ section are intended to act in concert with each other as appropriate.

(2) **Definitions.** For purposes of land classified under chapter 84.34 RCW, the following definitions apply:

(a) "Additional tax" means the additional property taxes that will be collected when classification is withdrawn or removed from land classified under chapter 84.34 RCW.

(b) "Affidavit" means the real estate excise tax affidavit required by chapter 82.45 RCW and chapter 458-61 WAC. The affidavit will be prescribed by the department and furnished to county treasurers. This form is used by landowners to report sales or transfers of classified land. The owner or transferor and the purchaser or transferee, or agents of each, must sign the affidavit under penalty of perjury.

(c) "Agreement" means an agreement executed between an owner and the granting authority regarding the classification of land as either open space or timber land under chapter 84.34 RCW.

(d) "Agricultural product" means livestock and plants useful to humans that are produced for commercial purposes and includes any agricultural, horticultural, or aquacultural produce or crop, or forage removed through the grazing of livestock, including equines; the raising of livestock, poultry, bees, or fur-bearing animals; or the production of milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom. When used in relation to livestock or fur-bearing animals used for food or fiber, "raising" means breeding or increasing the value, size, or weight of the animal. On parcels of land less than twenty acres, the value of forage removed through the grazing of livestock is reported by the land owner to each county assessor in accordance with WAC 458-30-225 (3)(d) and 458-30-270.

(e) "Applicant" means the owner who submits an application for classification of land under chapter 84.34 RCW.

~~((e))~~ (f) "Application" means an application for classification of land under chapter 84.34 RCW.

~~((f))~~ (g) "Approval" means a determination by the granting authority that land qualifies for classification under chapter 84.34 RCW.

~~((g))~~ (h) "Appurtenance" refers to something used with, and related to or dependent upon another thing; that is, something that belongs to something else, an adjunct. The thing appurtenant is strictly necessary and essential to the proper use and enjoyment of the land, as well as useful or necessary for carrying out the purposes for which the land was classified under chapter 84.34 RCW.

(i) In terms of farm and agricultural land, an appurtenance is something used for a particular sort of farm and is widely and routinely used in the operation of the commercial agricultural enterprise.

(ii) For example, an appurtenance may be an outhouse, barn, or tool shed attached to or adjoining a dwelling or it may be equipment used for a particular purpose or task, such as tools, instruments, or machinery.

~~((h))~~ (i) "Aquaculture" means the growing and harvesting of marine or fresh water flora or fauna in a soil or water medium for commercial agricultural activities.

~~((i))~~ (j) "Assessor" means the county assessor or any agency or person who is authorized to act on behalf of the assessor.

~~((j))~~ (k) "Assessment year" means the year in which the property is listed and valued by the assessor and precedes the year in which the taxes on the property are due and payable.

~~((k))~~ (l) "Change in use" means a direct action taken by an owner that actually changes the use of, or has started changing the use of, classified land to a use that is not in compliance with the conditions of the agreement executed

between the owner and the granting authority or to a use that is otherwise not in compliance with the provisions of chapter 84.34 RCW (see WAC 458-30-295).

((H)) (m) "Classified land" means a parcel(s) of land that has been approved by the appropriate granting authority for taxation under chapter 84.34 RCW.

((M)) (n) "Commercial agricultural purposes" means the use of land on a continuous and regular basis to produce an agricultural product for sale, prior to and subsequent to application for classification, that demonstrates that the owner or lessee is engaged in and intends to obtain through lawful means, a monetary profit from cash income ~~(received by engaging in the following commercial agricultural activities:~~

- (i) Raising, harvesting, and selling lawful crops;
- (ii) Feeding, breeding, managing, and selling of livestock, poultry, fur-bearing animals, or honey bees, or any products thereof;
- (iii) Dairying or selling of dairy products;
- (iv) Animal husbandry;
- (v) Aquaculture;
- (vi) Horticulture;
- (vii) Participating in a government-funded crop reduction or acreage set-aside program; or
- (viii) Cultivating Christmas trees or short rotation hardwoods on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees). In addition, commercial agricultural purposes include the following uses of agricultural land:
 - (i) Land enrolled in the federal conservation reserve program or its successor administered by the United States department of agriculture;
 - (ii) Land used for incidental uses that do not exceed twenty percent of the classified land and that are compatible with agricultural purposes;
 - (iii) Land on which employee housing or the principal residence of the farm owner or operator is located, if the housing or residence is on or contiguous to a classified parcel of twenty acres or more, and the use of the housing or the residence is integral to the use of the classified land for agricultural purposes;
 - (iv) Cultivating Christmas trees or short rotation hardwoods on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing such trees.

An owner or lessee must engage in commercial agricultural activities on the land to demonstrate a commercial agricultural purpose.

((N)) (o) "Contiguous" means land that adjoins other land owned by the same owner or held under the same ownership. Land that is an integral part of a farming operation is considered contiguous even though the land may be separated by a public road, railroad, right of way, or waterway.

((O)) (p) "County financial authority" and "financial authority" mean the treasurer or any agency or person charged with the responsibility of billing and collecting property taxes.

((P)) (q) "County legislative authority" means the county commission, council, or other legislative body.

((Q)) (r) "County recording authority" means the auditor or any agency or person charged with the recording of documents.

((R)) (s) "Current" and "currently" means as of the date on which property is to be listed and valued by the assessor.

((S)) (t) "Current use value" means the taxable value of a parcel of land placed on the assessment rolls following its classification under chapter 84.34 RCW.

((T)) (u) "Department" means the department of revenue.

((U)) (v) "Farm woodlot" means an area of land within a parcel(s) of classified farm and agricultural land that is used in a manner compatible with commercial agricultural activities including, but not limited to, the growing and cutting of trees for the use of the owner or the sheltering of livestock.

((V)) (w) "Granting authority" means the appropriate agency or official that acts on an application for classification under chapter 84.34 RCW. The granting authority for:

(i) Open space classification under RCW 84.34.020(1) and 84.34.037 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative body and three members of the city legislative body in the county in which the land is located;

(ii) Farm and agricultural classification under RCW 84.34.020(2) and 84.34.035 is the assessor or the assessor's designee; and

(iii) Timber land classification under RCW 84.34.020(3) and 84.34.041 is the county legislative authority. However, for applications within an incorporated area of a county, the granting authority is made up of three members of the county legislative body and three members of the city legislative body in the county in which the land is located.

((W)) (x) "Gross income" means cash income derived from commercial agricultural activities, including payments received from the United States Department of Agriculture for participating in a crop reduction or acreage set-aside program when such payments are based on the productive capacity of the land. The term shall not include the following:

(i) The value of any products produced on the land and consumed by the owner or lessee; however, the value of forage removed through the grazing of livestock is included in "gross income," if the grazing produces cash income;

(ii) Cash income derived from leases for the use of the land for noncommercial agricultural activities; or

(iii) Payments for soil conservation programs.

((X)) (y) "Incidental use" means a use of land classified as farm and agricultural land that is compatible with commercial agricultural activities if it does not exceed twenty percent of the classified land. An incidental use may include, but is not limited to, wetland preservation, a gravel pit, a farm woodlot, or a produce stand.

((Y)) (z) "Integral" means that which is central to or inherent in the use or operation of classified farm and agricultural land for commercial agricultural activities.

((Z)) (aa) "Interest" means the amount of applicable interest upon additional tax.

~~((aa))~~ (bb) "Net cash rental" means the earning or productive capacity of farm and agricultural land less the production costs customarily or typically paid by an owner or landlord. See WAC 458-30-260 for a more detailed explanation.

~~((bb))~~ (cc) "Notice of continuance" means the notice signed when land classified under chapter 84.34 RCW is sold or transferred if the new owner of the land intends to continue the classified use of the land and elects to have the land remain classified under chapter 84.34 RCW. This notice is part of the real estate excise tax affidavit or may be a separate document prepared by the department and attached to this affidavit.

~~((ee))~~ (dd) "Owner" means:

- (i) Any person(s) having a fee interest in a parcel of land;
or
(ii) The contract vendee when the land is subject to a real estate contract.

~~((dd))~~ (ee) "Parcel of land" means a property identified as such on the assessment roll. For purposes of chapter 84.34 RCW and this WAC chapter, a parcel shall not include any land area not owned by the applicant including, but not limited to, a public road, right of way, railroad, or waterway.

~~((ee))~~ (ff) "Penalty" means the amount due when land is removed from classification under chapter 84.34 RCW. The amount of the penalty is equal to twenty percent of the additional tax and interest calculated in accordance with RCW 84.34.080 or 84.34.108.

~~((ff))~~ (gg) "Planning authority" means the local government agency empowered by the appropriate legislative authority to develop policies and proposals relating to land use.

~~((gg))~~ (hh) "Primary use" means the existing use of a parcel or parcels of land so prevalent that when the characteristic use of the land is evaluated a conflicting or nonrelated use appears to be very limited or excluded.

~~((hh))~~ (ii) "Qualification of land" means the approval of an application for classification of land by a granting authority in accordance with chapter 84.34 RCW.

~~((ii))~~ (jj) "Rating system" means a public benefit rating system adopted for classified open space land according to RCW 84.34.055.

~~((jj))~~ (kk) "Reclassification" means the process by which land classified under chapter 84.34 or 84.33 RCW is changed from one classification to a different classification established by chapter 84.34 RCW or into forest land as described in chapter 84.33 RCW. For example, land classified as farm and agricultural land under RCW 84.34.020(2) may be reclassified as open space land under RCW 84.34.020(1).

~~((kk))~~ (ll) "Removal" or "removed" means land classified under chapter 84.34 RCW is removed from classification by the assessor either because the owner requests removal, the new owner fails to sign the notice of classification continuance, or the land is no longer being used for the purpose for which classification was granted.

~~((ll))~~ (mm) "Sale of ownership" means the conveyance of the ownership of a parcel of land in exchange for valuable consideration.

~~((mm))~~ (nn) "Tax year" means the year when property tax is due and payable.

~~((nn))~~ (oo) "Timber management plan" means the plan filed with the county legislative authority or the assessor when classified timber land is sold or transferred. It is synonymous with a "forest management plan" and details an owner's plan regarding the management of classified timber land including, but not limited to, the planting, growing and/or harvesting of timber. The elements of such a plan are set forth in WAC 458-30-232.

~~((oo))~~ (pp) "Transfer" means the conveyance of the ownership of a parcel of land without an exchange of valuable consideration and may include situations where classified land is donated to an owner, corporation, partnership, or limited liability corporation.

~~((pp))~~ (qq) "True and fair value" is the value of a parcel of land placed on the assessment rolls at its highest and best use without regard to its current use. The term also refers to market value, that is, the amount of money a buyer of property willing, but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might reasonably be applied.

~~((qq))~~ (rr) "Withdrawal" or "withdrawn" means action taken by the owner of land classified under chapter 84.34 RCW by filing a notice of request to withdraw the land from classification under the current use program in compliance with RCW 84.34.070. Once land has been classified under chapter 84.34 RCW, it must remain so classified for at least ten years from the date of classification. At any time after eight years of the initial ten-year classification period have elapsed, the owner may file a notice of request to withdraw all or a portion of the land from classification with the assessor of the county in which the land is located. Land is withdrawn from classification as a result of a voluntary act by the owner.

WSR 09-10-035

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 30, 2009, 7:29 a.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: The division of developmental disabilities is amending chapter 388-845 WAC, DDD home and community based waivers to add a fifth waiver, known as the children's intensive in-home behavioral supports (CIIBS). These rules are necessary to implement the CIIBS waiver and incorporate changes reflected in the waivers submitted to the federal Centers for Medicare and Medicaid Services under 1915 (c) of the Social Security Act and implement section 205 (1)(i), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100,

388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120; chapter 194, Laws of 2009; and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.

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

Reasons for this Finding: This emergency rule making is necessary to implement chapter 194, Laws of 2009, and the Centers for Medicare and Medicaid Services approval to begin the new HCBS waiver May 1, 2009. A CR-101 was filed as WSR 08-19-112 on September 17, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 18, Amended 38, 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 18, Amended 38, Repealed 0.

Date Adopted: April 28, 2009.

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 09-11 issue of the Register.

WSR 09-10-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-67—Filed April 30, 2009, 8:54 a.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: Amend commercial rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

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

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

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

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

Date Adopted: April 30, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-44-05000C Coastal bottomfish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective May 1, 2009, until further notice:

(1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottomfish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 74, Number 79, published on April 27, 2009. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

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

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty per-

cent of their total landing by weight, not to exceed 10,000 pounds.

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

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

REPEALER

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

WAC 220-44-05000B Coastal bottomfish catch limits. (09-28)

**WSR 09-10-040
EMERGENCY RULES
OFFICE OF THE
STATE TREASURER**

[Filed April 30, 2009, 12:16 p.m., effective April 30, 2009, 12:16 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend and update the procedures for financial institutions that hold public funds in Washington state in accordance with the Public Deposit Protection Act, as amended by chapter 9, Laws of 2009.

Citation of Existing Rules Affected by this Order: Repealing WAC 389-12-260; and amending WAC 389-12-010 through 389-12-320.

Statutory Authority for Adoption: Chapter 39.58 RCW.

Other Authority: RCW 39.58.040.

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

Reasons for this Finding: These emergency rules are needed to implement changes made to the Public Deposit Protection Act under chapter 9, Laws of 2009, and to update procedures for financial institutions holding public funds in consideration of the current banking environment. These rules are temporary while permanent rules are developed.

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 3, Amended 20, 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 3, Amended 25, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 1.

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: April 30, 2009.

Shad Pruitt
Deputy Treasurer

AMENDATORY SECTION (Amending Order 86-I, Resolution No. 86-003, filed 6/19/86)

WAC 389-12-010 Promulgation. The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter ~~(s-25 and 160)~~ 2, Laws of ~~(1986)~~ 2009, hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations ~~(effective July 1, 1986)~~.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-020 Definitions. Unless the context requires otherwise:

(1) ~~("Public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and whose charter has been approved by the commission to hold public deposits.~~

~~(2) "Financial institution" means any of the following which are located in this state and are lawfully engaged in business:~~

(a) Bank depositaries—Any branch of a bank engaged in the banking business in this state in accordance with RCW 30.04.300, and any state bank or trust company or national banking association.

(b) Thrift depositaries—Any state chartered mutual savings bank or stock savings bank, any state or federally chartered savings and loan association (including federally chartered savings bank-)) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depository as defined in chapter 39.58 RCW.

(3) "Investment deposits" (~~shall~~) means time deposits, savings deposits, and money market deposit accounts of public funds available for investment (~~—Savings deposits shall mean an interest bearing deposit of public funds that is subject to withdrawal and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. Time deposit shall mean a single maturity or multiple maturity interest bearing investment deposit of public funds, which is either evidenced by a certificate of deposit issued by a public depository, or reflected in a book entry system of such depository approved by federal regulatory authorities, state supervisor of banking and/or state supervisor of savings and loan associations, and which is payable to a treasurer on a date certain. Such certificate shall not be negotiable, nor an interest in an investment deposit transferable, except between treasurers and/or public depositaries. Money market deposit account shall mean an account established with a public depository in accordance with Public Law No. 97-320, the Garn-St. Germain Depository Institutions Act of 1982~~) as defined in Regulation D, Title 12 Code of Federal Regulations (CFR) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depository;

(b) The public depository arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depository acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depository receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" (~~shall~~) means a formal accounting rendered by all public depositaries to the commission, which details pertinent information of each depository

(~~as of the close of the last business day of each calendar quarter; the~~) in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission (~~not~~) no later than (~~(thirty days after the end of each calendar quarter)~~) the date a depository's financial report is due to its federal regulatory authority. (~~In addition, each public depository shall submit to the commission a nonquarter monthly reporting of~~)

(7) "Monthly report" means a report prepared by all public depositaries to the commission, which details insured and uninsured public funds and other pertinent information of each depository in a format supplied by the commission. (~~This report shall be due~~)

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight working days after the (~~end of each nonquarter month~~) monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.

(~~(5)~~) (11) "Date of loss" (~~shall~~) means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

(a) The date of the taking of possession of the financial institution by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a financial institution; or

(c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or

(d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

(e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

(~~(6)~~) (12) "Depository pledge agreement" means a written (~~tri-party~~) tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, (~~the trust department of the public depository;~~) or (~~any~~) such other (~~institution as~~) third-party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institu-

tion((s)). The agreement must be continuously, from the time of its execution, an official record of the ((bank)) financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

((7)) (13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement ((RCW 39.58.050)). A public depository ((wishing)) must submit a written request to the commission to reduce the amount of securities pledged as collateral ((must submit a written request to the commission)). The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

((8)) (14) "Net worth" of a public depository means((- (a) For a bank depository, the aggregate of capital, surplus, undivided profits and all capital notes and debentures which are subordinate to the interest of depositors;

(b) For a thrift depository, the aggregate of such capital stock, guaranty fund, general reserves, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors, as are eligible for inclusion in otherwise determining the net worth of a mutual savings bank, stock savings bank, or savings and loan association, excluding appraised equity capital, income capital certificates, net worth certificates, and deferred losses on loans sold;)) the same as defined in RCW 39.58.010.

Net worth for ((both bank and thrift)) public depositories headquartered outside Washington state may be adjusted by the commission to reflect the depositories' proportional net worth position in Washington state.

((9)) (15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority: Provided, That for the purposes of this definition such financial institution need not be located or doing business in the state of Washington.

((10)) (16) "Out-of-state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

((11)) (17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-030 New public depositories. Any financial institution in the state of Washington eligible under the act, in order to become a public depository, must be approved by the commission and segregate collateral in the manner as set forth in these rules prior to the receipt of public deposits. Until such time as public depositories have submitted four

consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible securities, valued at market value, in an amount equal to not less than 10% of ((#H)) uninsured public funds on deposit in said depository((- During the interim period in which a financial institution is required to file four consecutive reports, each such institution shall report to the commission on each commission report date in a format supplied by the commission)), or such other sum or measure established by the commission by rule or noticed resolution.

NEW SECTION

WAC 389-12-035 Withdrawing public depositories.

No public depository shall be released from its duties and liabilities until such financial institution has reported four accurate, consecutive commission reports indicating a zero balance of public funds on deposit. At such time, upon request by a public depository, the commission shall terminate a financial institution's status as a public depository.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-040 Computation and report of maximum liability. On each commission report date each public depository shall ((reaculate)) calculate its maximum liability in a format ((to be)) supplied by the commission. ((Such)) The commission report shall, in addition to other information required by the commission in its discretion, ((show)) include the ((current)) amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, ((such)) the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of ((these)) uninsured public deposits for the four most recent commission report ((periods)) dates, and the depository's maximum liability as defined in chapter 39.58 RCW ((39.58.010(6))).

The ((quarterly)) commission report ((to the commission)) shall be received in the office of the commission ((not later than thirty days following each calendar quarter end)) by the commission report due date, and shall ((have attached a completed copy of the balance sheet and deposit liabilities portion of)) also include schedules, as determined by the commission, from the public depository's most recent ((consolidated)) financial report ((of condition or consolidated statement of condition as reported)) to ((the depository's primary regulator)) its federal regulatory authority. Any public depository failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depository the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Depositories ((will)) shall use this ((figure for the current report period and)) amount to monitor their total public funds on deposit for the ensuing quarter,

unless notified of a revised (~~(figure)~~) amount by the commission.

Upon written request from a public depository the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed (~~(ten)~~) five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in (~~(section 19, chapter 177, Laws of 1984)~~) RCW 39.58.135, the depository shall immediately increase its collateral and the commission shall be so notified.

Each public depository shall provide to the commission a copy of any changes, amendments, or alterations to the public depository's financial report as submitted to (~~(appropriate)~~) its federal regulatory authority which relate to (a) deposits of states and political subdivision, and/or (b) net worth.

A monthly report of insured and uninsured public funds, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to the commission no later than (~~(eight working days following the end of each month)~~) the monthly report date. If applicable, adjustments to the depositories' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month (~~(except for those months in which the quarterly report must be submitted to the commission)~~). Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

NEW SECTION

WAC 389-12-045 Maximum liability established by resolution. Pursuant to RCW 39.58.010, the commission may from time to time set by resolution such other sum or measure to determine the maximum liability of a public depository. In setting such other sum or measure, the commission shall consider factors including, but not limited to, the overall market conditions for financial institutions, the extent to which public deposit protections might be lessened, and the effects such change may have on other public depositories.

NEW SECTION

WAC 389-12-047 Computation of maximum liability—Transition. The purpose of this section is to reconcile the computation of the maximum liability of a public depository in consideration of its definition prior to and subsequent to the enactment of chapter 9, Laws of 2009.

The maximum liability with reference to a public depository's liability under chapter 39.58 RCW shall be:

- (1) A sum equal to ten percent of:
 - (a) All uninsured deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or
 - (b) The average of the balances of total public deposits reported prior to enactment of chapter 9, Laws of 2009 and uninsured public deposits reported subsequently on the pub-

lic depository's four most recent commission report dates, whichever amount is greater; or

(2) Such other sum or measure as the commission may set by resolution.

For example, the computation of a public depository's maximum liability on March 31, 2009, will be greater of the uninsured public funds held on March 31, 2009; or the average of uninsured public funds held on March 31, 2009, plus total public funds held on December 31, 2008, September 30, 2008, and June 30, 2008.

This section shall have no prospective application to a public depository that has not withdrawn its participation pursuant to WAC 389-12-035 once a public depository has four consecutive commission report dates subsequent to the effective date of chapter 9, Laws of 2009.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-050 Valuation. Securities pledged as collateral by a public depository shall be reported at par and market value.

Market value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each depository shall provide, in a format supplied by the commission, a current listing of those securities pledged and their (~~(then)~~) current par and market (~~(and par)~~) value as of the commission report date.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-060 Deposit of collateral. Except for the exchange or substitution of securities having a like or greater market value, the trustee shall not permit the withdrawal of any security without advance written approval of the commission.

The trustee, under a depository pledge agreement, shall inform the commission whenever assets are delivered to or by the trustee by mailing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the receipt signed by the party that accepted delivery of such assets.

No costs, fees and expenses incidental to the functioning of the pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depository shall at all times maintain eligible collateral segregated and pledged with its trustee having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depository's responsibility regardless of the frequency and form of reports required by the commission.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-065 Aggregate deposit limitations. Whenever the public funds on deposit in a public depository

exceed the limits set forth in ~~((section 19, chapter 177, Laws of 1984))~~ RCW 39.58.135, such depository shall immediately:

- (1) Notify the commission; and
- (2) Provide additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

When a depository's net worth position is reduced, such depository shall determine if any ~~((public))~~ treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depository shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depository shall also advise the commission of its intent to:

- (1) Provide one hundred percent collateralization of the excess deposits; or
- (2) Allow the treasurer to withdraw such deposits in accordance with ~~((section 18, chapter 177, Laws of 1984))~~ RCW 39.58.130.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-071 Minimum standards for the financial condition of public depositories. Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depository ~~((must maintain a specified ratio of net worth to assets of not less than three percent))~~ shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depository. If ~~((such ratio for))~~ a public depository ~~((shall fall below three percent))~~ is categorized as under-capitalized for purposes of section 38 of the FDIA, the public depository shall pledge securities as collateral, valued at current market value, in a total amount at least equal to one hundred percent of its ~~((current))~~ uninsured public deposits~~((= Provided, That))~~, or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depository to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW 39.58.050(1), but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-075 Collateral level to be maintained. Whenever a public depository must pledge securities as collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the depository must monitor its uninsured public funds on deposit on a daily basis and maintain securities, valued at current market value, accordingly.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any financial

institution, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depository's net worth has remained unchanged from that stated in the most recently rendered commission report.

AMENDATORY SECTION (Amending Order 77-XIII, filed 9/27/77)

WAC 389-12-090 Additional reports, inspections, audits. The commission may from time to time require such additional reports as will facilitate the performance of its functions. All public depositories are required to submit to such inspections and/or audits of their public deposits and/or eligible collateral as the commission may from time to time require. Any public depository failing to respond timely to a request from the commission shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-100 Violations—~~((Penalty))~~ Sanction. ~~((Violations of))~~ If a public depository fails to comply with any of these rules, or of any of the provisions of the act ~~((shall be grounds for cancellation, suspension, or revocation of a financial institution's authority)), or any policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository complies with the commission's rules and policies.~~

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-130 Financial institution mergers. The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, ~~((take over))~~ take over, or acquisition ~~((except to the extent that))~~. Such liability ~~((is))~~ shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no assets subject to a depository pledge agreement shall be released by the commission or the trustee until such assumed liability is evidenced by the deposit of assets pursuant to the depository pledge agreement of the successor entity or resulting financial institution.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-140 Demand deposit account with financial institution located outside the state of Washington. A treasurer or state treasurer may, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such

account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it shall have been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-200 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington public deposit protection commission with the provisions of chapter 42.56 RCW, chapter ~~((+)) 274~~, Laws of ~~((1973 (Initiative 276), Disclosure Campaign finances Lobbying Records; and in particular with sections 25—32 of that act))~~ 2005, dealing with public records.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-220 Description of ~~((central and field organization of))~~ the Washington public deposit protection commission. The Washington public deposit protection commission is a state agency empowered to perform all duties prescribed by law with respect to the collateralization of public funds. The administrative offices of the ~~((Washington public deposit protection))~~ commission ~~((and its staff))~~ are located in the Office of the State ~~((treasurer's office in the))~~ Treasurer, Legislative Building, Olympia, Washington.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-230 Operations and procedures. The Washington public deposit protection commission is charged with the duty of protecting public funds on deposit by Washington's public treasurers and the state treasurer in the event of a default of a public depository, and such other duties as set forth in chapter 39.58 RCW.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-240 Public records available. All public records of the Washington public deposit protection commission ~~((as defined in WAC 389-12-210))~~ are deemed to be

available for public inspection and copying pursuant to these rules, except as otherwise provided by ~~((section 31, chapter 1, Laws of 1973 and WAC 389-12-210))~~ chapter 42.56 RCW, chapter 274, Laws of 2005.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-250 Public records officer. The Washington public deposit protection commission's public records shall be in the charge of the public records officer designated by the agency. The person so designated shall be located in the administrative office of the agency. The public records officer shall be responsible for the following: The implementation of the Washington public deposit protection commission's rules and regulations regarding release of public records, coordinating the staff of the commission in this regard, and generally insuring compliance by the staff with the public records disclosure requirements ~~((of chapter 1, Laws of 1973))~~. Persons submitting public record requests pursuant to these rules should submit those requests to Public Records Officer, Public Deposit Protection Commission, Office of the State Treasurer, Legislative Building, Olympia, Washington 98504.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-270 Requests for public records. In accordance with requirements of chapter 42.56 RCW, chapter ~~((+)) 274~~, Laws of ~~((1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures))~~ 2005:

(1) A request shall be made in writing upon ~~((a))~~ the form ~~((prescribed by the Washington public deposit protection commission which shall be available at its administrative office))~~ set forth in these rules herein or a substantially similar form. The form shall be presented to the public records officer, or to any member of the commission's staff, if the public records officer is not available, at the administrative office of the commission during customary office hours. ~~((The))~~ Any request on a form other than the form provided in these rules shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request ~~((was))~~ is made;
- (c) The ~~((nature of the request))~~ specified record requested;
- (d) ~~((If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~
- (e) ~~If the requested matter is not identifiable by reference to the commission's current index, an appropriate description of the record requested.~~

(2) ~~In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist~~

~~the member of the public in appropriately identifying the public record requested.)~~ The postal or electronic address at which the requester will accept written communication.

(2) All record requests shall be for a writing as that term is defined in statute, relating to the conduct of the public deposit protection commission, and prepared, owned, or retained by the commission. Requests shall be made by mail or verifiably received and acknowledged electronic mail.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-280 Inspection and copying. No fee shall be charged for the inspection of public records. Records shall be made available for inspection in accordance with chapter 42.56 RCW. Inspection shall occur at a time mutually agreed by the agency and requestor during customary office hours at a designated office location of the office of the state treasurer in Olympia, Washington. If copies are requested, the commission shall charge a fee of not to exceed ((25)) 15 cents per page, or actual costs as provided in RCW 42.56.070, of copy for providing copies of public records. This charge shall not exceed the amount necessary to reimburse the commission for its actual costs incident to such copying.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-290 Exemptions. (1) The commission reserves the right to ~~((determine))~~ assert that a public record requested in accordance with the procedures outlined in WAC 389-12-270, is exempt from disclosure under ~~((the provisions of section 31, chapter 1, Laws of 1973))~~ Washington law.

(2) ~~((In addition, pursuant to section 26, chapter 1, Laws of 1973,))~~ The commission reserves the right to delete ((identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing)) information exempted from disclosure under Washington law.

(3) All denials of requests for public records ~~((must))~~ shall be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-300 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such a decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the state treasurer as chairman of the commission. The chairman shall consider the matter and either affirm or reverse such denial or call a special meeting of the Washington public deposit protection commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the ~~((system))~~ commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-310 Records index. It is unduly burdensome for the commission to prepare and maintain an index of their materials since there is no appropriation provision for administrative staff and all of the duties prescribed by statute are conducted by state treasurer staff members, in addition to their regularly assigned duties regardless of overtime requirements and without regard to additional pay. All records of the commission are and will be made available in accordance with the due processes as set forth in these rules and other applicable law.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-320 Request for commission's decisions and other matters—Procedure. All communications with the commission including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW, chapter ((#)) 274, Laws of ((1973)) 2005, and these rules, requests for copies of the commission's decisions and other matters, shall be addressed as follows: ((Washington)) Public Deposit Protection Commission, ((e/o)) Office of State Treasurer, Legislative Building, Olympia, Washington, 98504.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 389-12-260 Office hours.

**WSR 09-10-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-68—Filed April 30, 2009, 2:29 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.
Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047,
77.32.010.

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

Reasons for this Finding: This regulation is needed to standardize regulations on boundary waters of Rufus Woods Lake for cooperative enforcement per agreement with the Colville Tribe and pursuant to RCW 77.32.010. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 30, 2009.

Philip Anderson
Director

Statutory Authority for Adoption: RCW 77.12.047.

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

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

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, 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: April 30, 2009.

April 30, 2009
Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Q Exceptions to statewide rules—Lake Rufus Woods. Pursuant to RCW 77.32.010, and notwithstanding the provisions of WAC 232-28-619, effective May 1, 2009, until further notice, a person may fish in waters of Rufus Woods Lake or within the Colville Tribal Designated Fishing Area with a Tribal permit or a Washington State Department of Fish and Wildlife license. Kokanee are now included as part of the two-trout daily limit. Chumming is not permitted.

**WSR 09-10-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-69—Filed April 30, 2009, 4:32 p.m., effective May 1, 2009]

Effective Date of Rule: May 1, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-116, 220-56-124, 232-28-619, 232-28-620, and 232-28-621.

NEW SECTION

WAC 220-56-11600G Statewide saltwater hook rules—2009 North of Falcon. Notwithstanding the provisions of WAC 220-56-116, effective May 1, 2009, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) It is unlawful to use more than two hooks to fish in saltwater, except for forage fish jigger gear and squid jig gear, and when fishing from the north jetty of the Columbia River.

(2) It is unlawful to use barbed hooks in Marine Areas 5-13, except for forage fish jigger gear.

(3) It is unlawful to use other than one single-point barbless hook to fish for sturgeon.

(4) It is unlawful to use other than single-point barbless hooks to fish for salmon in Marine Areas 1-13, except in the Ocean Shores and Westport Boat Basins, and in Marine Area 2-1 from August 1 until further notice, as provided for in this section.

(5) It is unlawful to fish for or possess salmon taken with terminal gear hooks in violation of the anti-snagging rule in the following saltwater areas during the periods indicated:

(a) Budd Inlet waters south of a line projected true west from the KGY radio station to the mainland, and north of the

closed zone provided for in WAC 220-56-128 - July 16 until further notice.

(b) Ocean Shores Boat Basin - August 16 until further notice.

(c) Westport Boat Basin - August 16 until further notice.

(6) It is unlawful to use forage fish jig gear, and anti-snagging rule and night closure are in effect, in the Duwamish Waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island - July 1 until further notice.

(7) Use of gear in violation of this section is an infraction, punishable under RCW 77.15.160.

(8) It is unlawful to possess fish or shellfish taken with gear in violation of the provisions of this section. Possession of fish or shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the fish or shellfish were taken with such gear. Possession of such fish or shellfish is punishable under RCW 77.15.380, unlawful recreational fishing in the second degree — Penalty, unless the fish or shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.370, unlawful recreational fishing in the first degree — Penalty.

NEW SECTION

WAC 220-56-12400I Unlawful provisions—Hoodsport Hatchery. Notwithstanding the provisions of WAC 220-56-124, effective July 1, 2009, until further notice, those waters of Catch Record Card Area 12 within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at the Hoodsport Salmon Hatchery are regulated as provided for in this section:

(1) These waters are open to salmon angling regardless of the status of the surrounding waters of Area 12.

(2) Special daily limit of four salmon, of which no more than two may be Chinook salmon greater than 24 inches in length. Release chum salmon.

(3) It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise.

NEW SECTION

WAC 232-28-61900R Exceptions to statewide rules—2009 North of Falcon. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2009, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Baker River (Skagit County):** Mouth to Highway 20 Bridge: Salmon: closed. From Highway 20 Bridge at Concrete to fish barrier dam: Closed waters.

(2) **Hoh River (Jefferson County),** Outside of Olympic National Park:

(a) From Olympic National Park upstream to DNR Oxbow Campground Boat Launch, selective gear rules not in effect.

(b) Selective gear rules August 1 until further notice, from DNR Oxbow Campground Boat Launch to Willoughby Creek.

(c) Selective gear rules beginning the first Saturday in June until further notice, from Willoughby Creek to Olympic National Park Boundary below the mouth of South Fork.

(3) **Nisqually River (Pierce County),** from mouth to Military Tank Crossing Bridge: Salmon: Open July 1 until further notice. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon, only 2 may be any combination of pink, chum and coho. Release wild adult Chinook.

(4) **Naselle River (Pacific/Wahkiakum counties),** from Highway 101 Bridge upstream including all forks: Salmon: Open August 1 until further notice, from Highway 101 Bridge to Highway 4 Bridge. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of these 3 adult fish, no more than 2 may be adult Chinook and only 1 may be a wild adult coho. Release chum salmon.

(5) **Nemah River, North, Middle, and South:** Salmon: Open August 1 until further notice on Middle Nemah from mouth to DNR Bridge, and on South Nemah from mouth to confluence with Middle Nemah. Middle and South Nemah: Daily limit 6 fish, of which no more than 2 may be adult salmon; and of the two adult fish, no more than one may be a wild adult coho. Release chum.

(6) **Nooksack River, South Fork (Skagit/Whatcom counties):**

(a) From mouth to Skookum Creek: The first Saturday in June until further notice. Selective gear rules. Night closure the first Saturday in June until further notice. Trout: Minimum length fourteen inches.

(b) From Skookum Creek upstream: Closed waters.

(7) **Quinault River, Upper (Jefferson County),** from mouth at upper end of Quinault Lake to the National Park boundary: Salmon: Open July 1 until further notice. Daily limit 6 fish, only 2 of which may be an adult.

(8) **Samish River (Whatcom County),** Salmon: Open July 1 until further notice from mouth to Thomas Road Bridge. Daily limit two salmon. Release wild coho.

(9) **Skagit River (Skagit/Whatcom counties):**

(a) From mouth to Memorial Highway Bridge (Highway 536 at Mt. Vernon): Salmon: Open July 9 through August 9. Open only 12:01 p.m. Thursday through Sunday. Daily limit 2 Chinook salmon, only one of which may be an adult Chinook. Night closure.

(b) From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: All species: Anti-snagging rule not in effect. Salmon: Open July 9 through August 9. Open only 12:01 p.m. Thursday through Sunday. Daily limit 2 Chinook salmon, only one of which may be an adult Chinook. Night closure – July 1 until further notice.

(c) From the Dalles Bridge at Concrete to the Highway 530 Bridge at Rockport: Closed June 1 until further notice between a line 200 feet above the east bank of the Baker River to a line 200 feet below the west bank of the Baker River. Anti-snagging rule and night closure July 1 until further notice. Salmon closed until further notice.

(10) **Willapa River (Pacific County):** Mouth to Highway 6 Bridge: Salmon: Open August 1 until further notice from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek. Daily limit 6 fish, of which no more than 3 may be adult salmon; and of the adult salmon,

not more than one may be a wild adult coho and not more than two may be adult Chinook. Release chum.

NEW SECTION

WAC 232-28-6200T Coastal salmon seasons—2009

North of Falcon. Notwithstanding the provisions of WAC 232-28-620, effective May 1, 2009, until further notice, 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) **Area 1:** Open June 28 until further notice: daily limit 2 salmon, not more than 1 of which may be a Chinook, except release wild coho.

(2) **Areas 2, 2-1, and 2-2:**

(a) Area 2:

(i) Open June 28 through July 23: open Sunday through Thursday of each week, daily limit 2 salmon, plus 1 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(ii) Open July 24 until further notice: daily limit 2 salmon, plus 1 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(b) Area 2-1:

(i) Open June 28 through July 23: open Sunday through Thursday of each week, daily limit 2 salmon, plus 1 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(ii) Open July 24 through July 31: daily limit 2 salmon, plus 1 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(iii) Open August 1 through August 15: daily limit 6 salmon, not more than two of which may be adult salmon.

(iv) Open August 16 until further notice, daily limit 6 salmon, not more than three of which may be adult salmon, of which only 2 may be Chinook. Release chum.

(c) Area 2-2 west of the Buoy 13 line: closed.

(d) Those waters within a line from the lighthouse 1 mile south of the south jetty to Buoy No. 2, then to Buoy No. 3, then to the tip of the north jetty, then to the exposed end of the south jetty, are closed August 1 until further notice.

(3) **Area 3:**

(a) Open June 27 through July 17: open Tuesday through Saturday of each week, daily limit 2 salmon, plus 2 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(b) Open July 18 until further notice: daily limit 2 salmon, plus 2 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(4) **Area 4:**

(a) Open June 27 through July 17: open Tuesday through Saturday of each week, daily limit 2 salmon, plus 2 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(b) Open July 18 until further notice: daily limit 2 salmon, plus 2 additional pink, not more than 1 of which may be a Chinook, except release wild coho.

(i) Effective June 27 through July 31, closed to salmon angling east of a true north/south line through Sail Rock.

(ii) Beginning August 1, release Chinook east of the Bonilla-Tatoosh Line.

(iii) Beginning August 1, release chum.

NEW SECTION

WAC 232-28-62100F Puget Sound salmon seasons—

2009 North of Falcon. Notwithstanding the provisions of WAC 232-28-621, WAC 220-56-128, and WAC 220-56-195, effective May 1, 2009, until further notice, it is unlawful to fish for salmon in Puget Sound except as provided for in this section, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Area 5:**

(a) Open July 1 - August 15, daily limit 2 salmon, plus 2 additional pink, except release chum, wild Chinook, and wild coho.

(b) Open August 16 until further notice, daily limit 2 salmon, plus 2 additional pink, except release chum, Chinook, and wild coho.

(2) **Area 6:**

(a) Open July 1 - August 15, daily limit 2 salmon, plus 2 additional pink, except release chum and wild coho; release wild Chinook west of a true north-south line through Buoy #2 immediately east of Ediz Hook; and release all Chinook east of a true north-south line through Buoy #2 immediately east of Ediz Hook.

(b) Open August 16 until further notice, daily limit 2 salmon, plus 2 additional pink, except release chum, Chinook, and wild coho.

(3) **Area 7:**

(a) Waters of Bellingham Bay described in WAC 220-56-195(1) closed July 1 through August 15. Open August 16 until further notice - Daily limit 4 salmon, not more than 2 of which may be Chinook salmon, and release pink.

(b) All other waters of Area 7 - Open July 1 until further notice, daily limit 2 salmon, plus 2 additional pink, not more than one of which may be a Chinook salmon; and effective beginning August 1, release chum and wild coho.

(4) **Area 8-1** - Open August 1 until further notice, daily limit 2 salmon, plus 2 additional pink, except release Chinook.

(5) **Area 8-2:**

(a) Effective June 5 through June 19 and June 21 until further notice - Waters adjacent to Tulalip Bay west of the line from Mission Point to Hermosa Point, and within 2,000 feet of shore, north of pilings at old Bower's Resort and south of the fishing marker 1.4 miles northwest of Hermosa Point, open Friday through 11:59 a.m. the following Monday of each week. Daily limit 2 salmon, plus 2 additional pink.

(b) Effective August 1 until further notice - All other waters of Area 8-2 open. Daily limit 2 salmon, plus 2 additional pink, except release Chinook.

(6) **Area 9:**

(a) Salmon fishing open until further notice, from the Edmonds fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook. Beginning July 1, daily limit may include 2 additional pink. Beginning August 1, release chum.

(b) Effective July 16 until further notice - All other waters of Area 9 open, daily limit 2 salmon, plus 2 additional pink, except release chum and wild Chinook. Closed south of a line from Foulweather Bluff to Olele Point.

(7) Area 10:

(a) Salmon fishing open until further notice, from the Elliott Bay public fishing pier, Seacrest pier, Waterman pier, Bremerton boardwalk, and Illahee State Park pier. Daily limit 2 salmon, not more than one of which may be a Chinook. Beginning July 1, daily limit may include 2 additional pink. Beginning August 1, release chum.

(b) Effective June 1 through June 30, closed; except open north of a line from Meadow Point to Point Monroe, and release all salmon.

(c) Effective July 1 until further notice, all other waters of Area 10 open with the following area rules, limits, and species restrictions:

(i) July 1 through July 15, daily limit 2 salmon, plus 2 additional pink, except release Chinook.

(ii) July 16 until further notice, daily limit 2 salmon, plus 2 additional pink, except release wild Chinook; and effective August 1, release chum.

(iii) Shilshole Bay east of a line from Meadow Point to West Point is closed.

(iv) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true west from Battle Point and west of a line projected true south from Point White: daily limit 2 salmon, plus 2 additional pink, except release wild Chinook; and effective August 1, release chum.

(v) During the period July 1 until further notice, Elliott Bay east of a line from West Point to Alki Point is closed; except July 3 through August 24 - Open east of a line from Pier 91 to Duwamish Head, Friday through Monday of each week - Daily limit of 2 salmon, plus 2 additional pink, and okay to retain any Chinook; release chum August 1 through August 24.

(vi) Effective July 1 until further notice, Duwamish waterway downstream from the First Avenue South Bridge to an east-west line through Southwest Hanford Street on Harbor Island parallel to Southwest Spokane Street where it crosses Harbor Island: Night closure, anti-snagging rule, and only fish hooked inside the mouth may be retained.

(8) Area 11:

(a) Salmon fishing open until further notice, from the Les Davis public fishing pier, Des Moines public fishing pier, Redondo public fishing pier, Dash Point dock, and Point Defiance Boathouse dock. Daily limit 2 salmon, not more than one of which may be a Chinook. Beginning July 1, daily limit may include 2 additional pink.

(b) Effective June 1 through June 30 - All other waters of Area 11 open. Daily limit 2 salmon, except release wild Chinook.

(c) Effective July 1 until further notice - Daily limit 2 salmon, plus 2 additional pink; release wild Chinook.

(d) Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay are closed June 1 through July 31.

(9) Area 12:

(a) July 1 until further notice in waters south of Ayock Point - Daily limit 4 salmon, of which no more than 2 may be Chinook salmon. Release chum.

(b) August 16 until further notice in waters of Quilcene Bay north of a true east line from Whitney Point to the Toandos Peninsula - Daily limit 4 coho salmon. Release all salmon except coho.

(c) July 1 until further notice, the Hoodspout Hatchery Zone is managed separately from the remainder of Area 12 described in WAC 220-56-124.

(10) Area 13:

(a) Salmon fishing open until further notice, from the Fox Island public fishing pier. Daily limit 2 salmon, not more than one of which may be a Chinook; and effective July 1, release wild coho.

(b) All other waters of Area 13, open May 1 until further notice, with the following area rules, limits and species restrictions:

(i) May 1 through June 30 - Daily limit 2 salmon, except release wild Chinook.

(ii) July 1 until further notice - Daily limit 2 salmon, except release wild coho and wild Chinook.

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

WSR 09-10-052

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-66—Filed May 1, 2009, 1:39 p.m., effective May 1, 2009, 1:39 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Mandatory pick rate allowance for coastal crab will be achieved by the opening dates contained herein. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 1, 2009.

Philip Anderson
Director

NEW SECTION

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

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

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

(3) It is lawful to pull crab gear in the area between Klipsan Beach and the U.S. Canadian border and Grays Harbor effective immediately.

(4) The Quinault Primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

• Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
• Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
• Southwest Corner:	47°08.00 N. Lat.	124°24.75 W. Lon.
• Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(5) The Quileute Special Management area (SMA) is closed to fishing until 8:00 a.m. May 1, 2009. It is unlawful for a vessel to deploy more than 100 pots in the Quileute SMA beginning at 8:00 a.m. May 1, 2009 until 8:00 a.m. June 1, 2009. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following three methods:

- Fax transmission to Brandon Bryant at 360-664-0689;
- Email to Brandon Bryant at: bryanblb@dfw.wa.gov or
- Telephone call to: Brandon Bryant at 360-249-4628, ext. 229

The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner; Cape Johnson 47°58.00' N. Lat. - 124°40.40' W. Lon.

- Northwest Corner; 47°58.00' N. Lat. - 124°49.00' W. Lon.

- Southwest Corner; 47°40.50' N. Lat. - 124°40.00' W. Lon.

Southeast Corner; Destruction Island; 47°40.50' N. Lat - 124°24.43' W. Lon.

(6) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15.00 N. Latitude), extending 200 nautical miles westward.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600E Coastal crab seasons. (09-21)

WSR 09-10-063 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-72—Filed May 4, 2009, 1:56 p.m., effective May 9, 2009]

Effective Date of Rule: May 9, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 4, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-56-3600W Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 a.m. May 9 through 11:59 a.m. May 10, 2009, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. May 9 through 11:59 a.m. May 9, 2009, razor clam digging is allowed that portion of Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. only.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. May 10, 2009:

WAC 220-56-3600W Razor clams—Areas and seasons.

**WSR 09-10-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-73—Filed May 5, 2009, 1:45 p.m., effective May 5, 2009, 1:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500K; and amending WAC 220-56-325.

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 is needed to ensure an orderly fishery, manage within court-ordered sharing requirements, and to ensure conservation. The state recreational harvest share of spot shrimp will be taken by 3:00 p.m., May 6, 2009, in Marine Areas 9 and 10. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 5, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-32500L Shrimp—Areas and seasons. Notwithstanding the provisions of WAC 220-56-325:

1) Effective immediately until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Area 11 and the Discovery Bay Shrimp District.

2) Effective 3:00 p.m., May 6, 2009 until further notice, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 9 and 10.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-32500K Shrimp—Areas and seasons (09-59)

**WSR 09-10-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-70—Filed May 5, 2009, 1:52 p.m., effective June 1, 2009]

Effective Date of Rule: June 1, 2009.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900S; 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: Agency intent was to open the Little Naches River on the first Saturday in June under the new statewide river/stream season. Due to an oversight, the new 2009-10 pamphlet retained the old June 1 opening date. This emergency rule corrects the discrepancy between the pamphlet and the Washington Administrative Code. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: May 5, 2009.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900S Exceptions to statewide rules—Little Naches River (Yakima Co.) Notwithstanding the provisions of WAC 232-28-619, effective June 1 through June 5, 2009, a person may fish in waters of the Little Naches River.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 6, 2009:

WAC 232-28-61900S Exceptions to statewide
rules—Little Naches River.

WSR 09-10-084

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 6, 2009, 9:06 a.m., effective May 6, 2009, 9:06 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities is amending WAC 388-831-0010 and 388-831-0030 to include individuals who have a history of violent behavior which demonstrates the likelihood to commit a violent act. This amendment reflects the legislation contained in RCW 71A.12.210. The department is proceeding to adopt these rules on a permanent basis.

Citation of Existing Rules Affected by this Order: Amending WAC 388-831-0010 and 388-831-0030.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.210.

Other Authority: Title 71A RCW.

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

Reasons for this Finding: This rule is necessary for the preservation of public health, safety or general welfare by expanding the population who have community protection issues and may be eligible for services. This group of individuals was inadvertently omitted from the permanent rule filed previously. This emergency rule extends the emergency rule filed as WSR 09-02-077 while the department completes stakeholder work and the permanent rule-making process. The department anticipates filing for the CR-102 by June 30, 2009.

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 2, 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: May 1, 2009.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

"Department" means the department of social and health services.

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or

- If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and
- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

~~("Violent offense" means any felony defined as a violent offense in RCW 9.94A.030-))~~

"Violent" or "violence" means acts that meet the criteria for crimes listed in RCW 9.94A.030(32), 9.94A.030(45), 9.94A.030(46), 9.94A.030(54), or 9A.48.040, whether or not the person who committed the acts has been charged with or convicted of the crime.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-20-118, filed 9/30/08, effective 10/31/08)

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

(1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.10.020(3); and

(2) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been charged with or convicted of a crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of violent, stalking, sexually violent, predatory and/or opportunistic behavior which a qualified professional has determined demonstrates a likelihood to commit a violent, sexually violent and/or predatory act (~~based on current behaviors that may escalate to violence, as determined by a qualified professional~~); and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.