

WSR 09-20-003**EMERGENCY RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed September 24, 2009, 9:30 a.m., effective September 26, 2009]

Effective Date of Rule: September 26, 2009.

Purpose: Under the 2009-11 Omnibus operating budget, funding for maternity support services is reduced by twenty percent from current levels. In order to meet this legislatively-mandated reduction, WAC 388-533-1000 is being repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-533-1000.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.800.

Other Authority: 2009-11 Omnibus operating budget (ESHB 1244).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: This emergency filing is necessary to continue the current emergency rule (repeal) for WAC 388-533-1000 filed as WSR 09-12-051 on May 28, 2009, while the department researches cost information and prepares drafts of this information to share with providers for their input. Following this, the department plans to formally propose the permanent repeal of this rule in December of this year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: September 17, 2009.

Stephanie E. Vaughn
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-533-1000

First steps child care program.

WSR 09-20-007**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-223—Filed September 24, 2009, 2:47 p.m., effective September 25, 2009, 9:00 p.m.]

Effective Date of Rule: September 25, 2009, 9:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2009 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule closes the beam trawl fishery season in Shrimp Management Area 1B because the quota has been harvested. 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; and Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 24, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100Z Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial

purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 2E, 2W, 3 and 6 are open to the harvest of all shrimp species, excluding spot shrimp, until further notice, except that all waters of Catch Areas 23A-E, 23A-C, 23A-W, and the Discovery Bay Shrimp District are closed.

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

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

(i) The number of pots being moved to a new area; and

(ii) The Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

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

(2) Shrimp beam trawl gear:

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

(b) All waters of Catch Area 20A are open immediately until further notice.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:00 p.m. September 25, 2009:

WAC 220-52-05100Y	Puget Sound shrimp pot and beam trawl fishery—Season. (09-214)
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**WSR 09-20-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-221—Filed September 24, 2009, 2:58 p.m., effective September 24, 2009, 2:58 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets the initial fishing periods for the late fall nontreaty commercial season. Impacts remain available for upriver brights and harvestable coho, chinook and sturgeon are available. The seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon allocation agreement and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of September 22, 2009. There is insufficient time to promulgate permanent rules.

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

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

logical opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 24, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000P Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River

a. SEASON #1: 9 PM September 24 to 5 AM September 25, 2009 and

9 PM September 28 to 5 AM September 29, 2009

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

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fish-

ery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sights remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

2. Mainstem Columbia River

a. SEASON #2: 6 AM – 6 PM September 28, 2009 and

6 AM – 6 PM September 30, 2009

b. AREA: SMCRA 1A, 1B and 1C (Zones 1 - 3)

c. GEAR: 6-inch maximum mesh size. Unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sights remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

3. Mainstem Columbia River

a. SEASON #3: 6 AM – 6 PM Tuesday, September 29, 2009

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

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

d. SANCTUARIES: Elokomin-B, Abernathy, Cowlitz, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sights remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

4. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009.

Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters

include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. ALLOWABLE SALES: Salmon.

5. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

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

d. ALLOWABLE SALES: Salmon.

6. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights immediately through October 31, 2009. Open hours 7 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

7. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000N Columbia River season below Bonneville (09-209)

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

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

WSR 09-20-009 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 09-146—Filed September 24, 2009, 4:32 p.m., effective September 26, 2009]

Effective Date of Rule: September 26, 2009.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in the sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to 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: September 24, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-07100A Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective September 26, 2009, until further notice, it is unlawful to take or possess

sea cucumbers taken for commercial purposes except as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2 and 5 on Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 3 on Monday, Tuesday and Wednesday of each week.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective September 26, 2009:

WAC 220-52-07100Z Sea cucumbers. (09-192)

WSR 09-20-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-226—Filed September 25, 2009, 3:55 p.m., effective September 26, 2009]

Effective Date of Rule: September 26, 2009.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-30700F, 220-47-31100B and 220-47-42800D; and amending WAC 220-47-307, 220-47-311, and 220-47-428.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable surpluses of coho are diminishing, and to ensure minimal impacts to Endangered Species Act-listed summer chum, a closure is necessary in Salmon Management and Catch Reporting Area 12A. Also, two vessels have been added to the limited participation salmon net fisheries in Salmon Management and Catch Reporting Area 8A. 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 3, Amended 0, Repealed 3.

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

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

Date Adopted: September 25, 2009.

Lori Pruess
for Philip Anderson
Director

NEW SECTION

WAC 220-47-30700F Closed areas—Puget Sound salmon. Notwithstanding the provisions of WAC 220-47-307, effective September 28, 2009, it is permissible for the vessels "Sea Pride" and "Haida Warrior" to fish in waters of Puget Sound Salmon Management and Catch reporting Area 8A southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

NEW SECTION

WAC 220-47-31100B Puget Sound purse seine fishery. Notwithstanding the provisions of WAC 220-47-311 and WAC 220-47-500, it is permissible for the vessels "Sea Pride" and "Haida Warrior" to participate in the Purse seine fishery in Puget Sound Salmon Management and Catch Reporting Area 8A on September 28 and October 5, 2009.

NEW SECTION

WAC 220-47-42800D Puget Sound beach seine fishery. Notwithstanding the provisions of WAC 220-47-428, effective September 26, through September 29, 2009, it is unlawful to take or fish for salmon for commercial purposes with beach seine gear in those waters of Puget Sound Management and Catch Reporting Area 12A.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 29, 2009:

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

The following section of the Washington Administrative Code is repealed effective October 6, 2009:

WAC 220-47-31100B Puget Sound purse seine fishery.

The following section of the Washington Administrative Code is repealed effective September 30, 2009:

WAC 220-47-42800D Puget Sound beach seine fishery.

WSR 09-20-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-205—Filed September 25, 2009, 3:59 p.m., effective September 26, 2009]

Effective Date of Rule: September 26, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The increasing presence of steelhead in the Methow River, coupled with increasing angler effort, have accelerated the number of steelhead encounters, necessitating a river closure to remain within incidental take limits set by NOAA Fisheries. The Endangered Species Act, Section 10, Permit 1554, addresses the incidental take of listed species separately for each fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 25, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Methow River. Notwithstanding the provisions of WAC 232-28-619, effective September 26 through September 30, 2009, it is unlawful to fish in waters of the Methow River from the Lower Burma Road Bridge to Foghorn Dam.

REPEALER

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

WAC 232-28-61900U Exceptions to statewide rules—Methow River.

WSR 09-20-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-228—Filed September 28, 2009, 4:03 p.m., effective September 28, 2009, 4:03 p.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of this rule, WAC 232-12-24300F, is to provide sufficient time for applicants of public safety cougar removal permits to obtain the licenses and tags necessary to participate in the public safety cougar removal season. The application deadline is October 19, 2009.

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

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

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

Reasons for this Finding: This emergency rule is needed to extend the public safety cougar removal application date from October 1, 2009, until October 19, 2009, in order to lengthen the reporting period for public safety situations involving cougars. The current application deadline of October 1, 2009, would prevent information gleaned from the extended reporting period from being used to plan and implement the cougar removal program as required. Cougar removal programs are critical to preventing cougar populations from growing beyond manageable numbers. There is insufficient time to promulgate permanent rules prior to the current deadline.

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

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

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

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

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

Date Adopted: September 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-12-24300F Public safety cougar removals—Application date extension. Notwithstanding the provisions of WAC 232-12-243, applications for the public safety cougar removal 2009-2010 season will be accepted if postmarked no later than October 19, 2009.

**WSR 09-20-025
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-229—Filed September 28, 2009, 5:03 p.m., effective September 28, 2009, 5:03 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets a 2.5 day treaty Indian fishing period for the 2009 fall season. Harvest of Upriver Bright chinook and Group B steelhead is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 26 and September 25, 2009. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

New regulations for 2009 include fisheries that are described in the MOA between Washington State and the Yakama Nation. Yakama Nation tribal members will be allowed to fish for subsistence purposes within a specific area of the Washington shoreline below Bonneville Dam when open for enrolled Yakama Nation members under lawfully enacted Yakama Nation tribal subsistence fisheries. Sales will be allowed when the open fishery is concurrent with

either commercial gillnet openings or platform gear in Zone 6 (SMCRA 1F, 1G, 1H). Sales of fish caught in this fishery (below Bonneville Dam) are consistent with mainstem Zone 6 (SMCRA 1F, 1G, 1H) allowable sales, with the exception of sturgeon (which may not be sold or kept for subsistence purposes in the fishery below Bonneville Dam).

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

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

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

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

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

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

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

Date Adopted: September 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the White Salmon

River, and Klickitat River, except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

a) SEASON: 6:00 AM September 29 through 6:00 PM October 1, 2009

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

c) GEAR: Gillnet, no minimum mesh size restriction.

2. Mainstem Columbia River above Bonneville Dam

a) SEASON: Immediately until further notice.

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

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

3. Columbia River Tributaries above Bonneville Dam

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

b) AREA: White Salmon and Klickitat rivers.

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

4. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam" the area below Bonneville Dam is open for commercial sales only for enrolled Yakama Nation members and only during those times that commercial sales are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

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

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

5. SANCTUARIES: Standard river mouth and dam sanctuaries applicable to these gear types, including the standard Spring Creek Hatchery sanctuary, described as: Those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points one-half mile upstream from the eastern shoreline to one and one-half miles downstream from the western shoreline of the mouth of Spring Creek.

6. ALLOWABLE SALES: Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be sold or retained for subsistence. Sturgeon may not be sold, Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Sturgeon caught below Bonneville Dam may **NOT** be retained and may **NOT** be sold. Fish may **NOT** be sold

on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (09-216)

**WSR 09-20-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-227—Filed September 28, 2009, 5:07 p.m., effective September 29, 2009]

Effective Date of Rule: September 29, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The fishery will reduce the number of excess hatchery-origin steelhead and consequently increase the proportion of natural-origin steelhead on the spawning grounds. Higher proportions of naturally produced spawners are expected to improve genetic integrity and stock recruitment of upper Columbia River steelhead through perpetuation of steelhead stocks with the greatest natural-origin lineage. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 28, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900V Exceptions to statewide rules—Columbia, Entiat, Methow, Okanogan, Similkameen, Wenatchee rivers and Icicle Creek. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect: Mandatory retention of adipose fin-clipped hatchery origin steelhead. Release any steelhead with one or more round holes punched in the caudal (tail) fin. Current salmon and all other game fish gear rules do not apply during steelhead season.

(1) Effective September 29, 2009, until further notice, a person may fish for steelhead in the Columbia River from Rock Island Dam to 400 feet below Chief Joseph Dam. Selective gear rules, except bait and motorized vessels allowed. Night closure in effect. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(2) Effective September 29, 2009, until further notice, a person may fish for steelhead in the Entiat River upstream from the Alternate Highway 97 Bridge near the mouth of the Entiat River to 800 feet downstream of the Entiat National Fish Hatchery outfall. Night closure and selective gear rules apply, except motorized vessels allowed. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(3) Effective September 29, through November 15, 2009, until further notice, a person may fish for salmon and steelhead in waters of Icicle River from the mouth to 500 feet downstream of Leavenworth National Fish Hatchery Barrier Dam. Night closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead, minimum size 20 inches; and three coho salmon, minimum size 12 inches. Release all floy-tagged coho.

(4) Effective September 29, 2009, until further notice, a person may fish for steelhead in waters of the Methow River from the Hwy. 97 Bridge in Pateros upstream to the second powerline crossing, and from the first Hwy. 153 Bridge north of Pateros to the confluence with the Chewuch River. Closed waters from second powerline crossing to the first Hwy. 153 Bridge. Night closure and selective gear rules apply, except motorized vessels allowed. Whitefish gear rules do not apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(5) Effective September 29, 2009, until further notice, a person may fish for steelhead in the Okanogan River, except CLOSED WATERS from the Lake Osoyoos Control Dam (Zosel Dam) downstream to the first Hwy 97 Bridge below Oroville, Washington. Night closure and selective gear rules apply, except motorized vessels are allowed. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(6) Effective November 1, 2009, until further notice, a person may fish for steelhead in waters of the Similkameen River from the mouth to 400 feet below Enloe Dam. Night

closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

(7) Effective September 29, 2009, until further notice, a person may fish for steelhead in waters of the Wenatchee River from the mouth to the sign about 800 feet below the downstream side of Tumwater Dam. Night closure and selective gear rules apply. Daily limit may contain up to four adipose fin clipped steelhead; minimum size 20 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 29, 2009:

WAC 232-28-61900U Exceptions to statewide rules—Methow River. (09-224)

WSR 09-20-029
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2009, 2:34 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: The department is proposing to amend all necessary sections in Title 388 WAC to implement annual adjustments to standards for the Washington Basic Food program and WASHCAP. Changes include updates to the following standards for Federal Fiscal Year 2009: Income standard, maximum shelter deduction, standard deduction, utility allowances.

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

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

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

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: SNAP Administrative Notice 09-51.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: September 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

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

Eligible and ineligible AU members	Standard deduction
1	\$ ((144)) <u>141</u>
2	\$ ((144)) <u>141</u>
3	\$ ((144)) <u>141</u>
4	\$ ((147)) <u>153</u>
5	\$ ((172)) <u>179</u>
6 or more	\$ ((197)) <u>205</u>

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

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 08-24-050, filed 11/25/08, effective 12/26/08)

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

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

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

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

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

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

- (a) Up to a maximum of four hundred ~~((forty-six))~~ fifty-nine dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((forty-six))~~ fifty-nine dollars.

AMENDATORY SECTION (Amending WSR 09-14-018, filed 6/22/09, effective 7/23/09)

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

EFFECTIVE (~~(4-1-2009)~~) 10-1-2009

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,127) <u>1,174</u>	\$(867) <u>903</u>	\$200	\$(1,430) <u>1,490</u>
2	((1,517)) <u>1,579</u>	((1,167)) <u>1,215</u>	367	((1,925)) <u>2,004</u>
3	((1,907)) <u>1,984</u>	((1,467)) <u>1,526</u>	526	((2,420)) <u>2,518</u>
4	((2,297)) <u>2,389</u>	((1,767)) <u>1,838</u>	668	((2,915)) <u>3,032</u>
5	((2,687)) <u>2,794</u>	((2,067)) <u>2,150</u>	793	((3,410)) <u>3,547</u>
6	((3,077)) <u>3,200</u>	((2,367)) <u>2,461</u>	952	((3,905)) <u>4,061</u>
7	((3,467)) <u>3,605</u>	((2,667)) <u>2,773</u>	1,052	((4,400)) <u>4,575</u>
8	((3,857)) <u>4,010</u>	((2,967)) <u>3,085</u>	1,202	((4,895)) <u>5,089</u>
9	((4,247)) <u>4,416</u>	((3,267)) <u>3,397</u>	1,352	((5,390)) <u>5,604</u>
10	((4,637)) <u>4,822</u>	((3,567)) <u>3,709</u>	1,502	((5,885)) <u>6,119</u>
Each Additional Member	+((390)) <u>406</u>	+((300)) <u>312</u>	+150	+((495)) <u>515</u>

Exceptions:

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-12-068, filed 5/29/09, effective 7/1/09)

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

- (1) We begin with your gross income.
- (2) We subtract one hundred (~~forty-four~~) forty-one dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use three hundred seventy-nine dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use one hundred eighty-two dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 09-20-030
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed September 29, 2009, 2:39 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: In the 2009 legislative session, the legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills have an effective date of October 1, 2009.

The division of child support (DCS) must adopt rules to implement this legislation by October 1, 2009. DCS has begun the rule-making process by filing a CR-101, preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. As the rule development process progressed, DCS determined that, in order to make all the required changes under both ESHB 1794 and SHB 1845, it would be necessary to adopt one set of rules which covered both bills.

DCS will be unable to complete the regular adoption process by the effective date. DCS is adopting emergency rules at this time, but continues the regular rule-making process and will adopt final rules as soon as possible.

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt (~~(of)~~), notice of support owed (~~(of)~~), notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide (~~(health insurance)~~) medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide (~~(health insurance coverage)~~) medical support?, 388-14A-4115 Can

my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 (~~(Is an employer)~~) Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5002 How does DCS distribute support collections in a nonassistance case?, 388-14A-5003 How does DCS distribute support collections in an assistance case?, 388-14A-5004 How does DCS distribute support collections in a former assistance case?, 388-14A-5005 How does DCS distribute federal tax refund offset collections?, 388-14A-5006 How does DCS distribute support collections when the paying parent has more than one case?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: Section 5 of ESHB 1794 (chapter 84, Laws of 2009) and RCW 34.05.020, 34.05.060; 34.05.220, 74.08.090, 74.20.040 and SHB 1845 (chapter 476, Laws of 2009), RCW 26.18.170(14), 26.23.050(8), 26.23.110(13), 34.05.020, 34.05.220, 74.04.055, 74.04.057, 74.08.090, 74.20.040, 74.20A.310, 74.20A.055(9), 74.20A.056(11).

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: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both have an effective date of October 1, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we are unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and will adopt final rules as soon as possible.

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 1, Amended 28, 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 Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 28, Repealed 0.

Date Adopted: September 28, 2009.

Stephanie E. Vaughn
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 09-22 issue of the Register.

WSR 09-20-036

RESCISSION OF EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 30, 2009, 9:34 a.m.]

The aging and disability services administration requests the rescission of the emergency rule-making order filed as WSR 09-14-045 on June 24, 2009, effective July 1, 2009 (sections in chapters 388-71 and 388-106 WAC regarding adult day health).

The department is refiling a new emergency rule.

Stephanie E. Vaughn
Rules Coordinator

WSR 09-20-037

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 30, 2009, 9:35 a.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: Amending WAC 388-71-0724 to update the payment rates to adult day health (ADH) centers. This emergency rule replaces rules filed as WSR 09-14-045. The United States District Court in Seattle issued an order requiring DSHS to reinstate ADH services to residential clients until certain conditions are met. The rates must be amended to prevent double payment for medicaid costs related to transportation for ADH clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-0724.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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 is necessary to comply with and implement a preliminary injunction order issued September 4, 2009, by the U.S. District Court for the Western District of Washington in *Washington State Long-Term Care Ombudsman v. Dreyfus*, Cause No. C09-0908RAJ. This emergency rule is also necessary to ensure receipt of federal funds for ADH services to members of the class defined in the preliminary injunction and to prevent

double payment for medicaid costs related to transportation for ADH clients.

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

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

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

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

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

Date Adopted: September 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

WAC 388-71-0724 Adult day services—Contracting and rates. (1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging through a COPEs contract or with the department through a medicaid provider contract. If a center is contracting for both day care and day health, requirements of both adult day services must be met.

(a) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging.

(b) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

(c) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

(d) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

(e) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

(f) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

(2) Minimum application information required to apply for contract with the department, or an area agency on aging includes:

- (a) Mission statement, articles of incorporation, and bylaws, as applicable;
 - (b) Names and addresses of the center's owners, officers, and directors as applicable;
 - (c) Organizational chart;
 - (d) Total program operating budget including all anticipated revenue sources and any fees generated;
 - (e) Program policies and operating procedure manual;
 - (f) Personnel policies and job descriptions of each paid staff position and volunteer position functioning as staff;
 - (g) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;
 - (h) Audited financial statement;
 - (i) Floor plan of the facility;
 - (j) Local building inspection, fire department, and health department reports;
 - (k) Updated TB test for each staff member according to local public health requirements;
 - (l) Sample client case file including all forms that will be used; and
 - (m) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.
- (3) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.
- (a) The area agency on aging will send a written notice to the provider indicating either compliance with contacting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed
- (b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.
- (4) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.
- (5) Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to SSPS billing instructions.
- (6) Rates as of July 1, 2002, are as follows:

Counties	COPES Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69

(7) Adult day health.

~~(a)~~ Payment rates are established on a ~~((daily))~~ per day basis for adult day health centers ~~((as may be adopted in rule))~~. Rate adjustments are determined by the state legislature. ~~((Providers seeking))~~ Information on current reimbursement rates ((can refer to MAA billing instructions or <http://maa.dshs.wa.gov>)) is available at <http://www.adsa.dshs.wa.gov/professional> under the "office of rates management" section.

~~((8))~~ Rates as of July 1, 2002, are as follows:))

((Counties	Day Health Daily
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68))

~~(b)~~ A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate ~~((as may be adopted in rule))~~. ~~((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents))~~ Information on current reimbursement rates is available at <http://www.adsa.dshs.wa.gov/professional> under the "office of rates management" section. Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

~~((9))~~ (8) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.

~~((10))~~ (9) Transportation to and from the program site is not reimbursed under the adult day health rate. Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC.

WSR 09-20-038

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 30, 2009, 9:36 a.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: Amending WAC 388-106-0125 If I am over age twenty-one, how does CARE use criteria to place me in a classification group for in-home care? and adopting new WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care?

These emergency rules replace rules filed as WSR 09-14-046. The department is revising WAC 388-106-0125 to amend the in-home classifications to allow for the reduction of in-home base hours for each of the seventeen classification groups. The department is adopting new WAC to comply with a United States District Court order to exclude children

and youth under the age of twenty-one from the rules filed as WSR 09-14-046.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0125.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2009-11 budget (ESHB 1244).

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; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The Washington state 2009-11 operating budget (ESHB 1244) directs the department to reduce the number of in-home hours authorized. The hours awarded for in-home long-term care for each of the seventeen CARE classification groups are reduced by a certain percentage. As instructed by the legislature, classification groups with greater care needs receive a smaller percentage reduction than classification groups with lesser care needs.

The United States District Court in Tacoma issued an order stating "that the department will not apply the emergency rules contained in WSR 09-14-046 to the medicaid in-home personal care services provided to children and youth under the age of 21." These emergency rules replace rules filed as WSR 09-14-046.

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 1, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 25, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-10-022, filed 4/25/08, effective 5/26/08)

WAC 388-106-0125 If I am over age twenty-one, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-

106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with (~~(420)~~) 416 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with (~~(350)~~) 346 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with (~~(280)~~) 277 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with (~~(240)~~) 234 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with (~~(190)~~) 185 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with (~~(145)~~) 138 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with (~~(200)~~) 194 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with (~~(180)~~) 174 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with (~~(140)~~) 132 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with (~~(95)~~) 87 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with (~~(155)~~) 147 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with (~~(90)~~) 82 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with (~~(52)~~) 47 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with (~~(155)~~) 147 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ~~((110))~~ 101 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ~~((90))~~ 82 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ~~((52))~~ 47 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with ~~((78))~~ 71 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ~~((62))~~ 56 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ~~((29))~~ 26 base hours if you have an ADL score of 0-4.

NEW SECTION

WAC 388-106-0126 If I am under age twenty-one, how does care use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with 420 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with 350 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with 280 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with 240 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with 190 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with 145 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with 200 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with 180 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with 140 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with 95 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with 90 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with 52 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with 110 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with 90 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with 52 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with 78 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with 62 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with 29 base hours if you have an ADL score of 0-4.

WSR 09-20-043

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-230—Filed September 30, 2009, 1:18 p.m., effective September 30, 2009, 1:18 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Sets the additional fishing periods for the late fall nontreaty commercial season. Adjusts the open hours in the Deep River select area based on industry request. Chinook, coho and sturgeon remain available for harvest, based on current run size estimates and ESA impact limits. The seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon allocation agreement, and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of September 29, 2009. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington

(WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 30, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000Q Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River

a. SEASON #1: 7 PM September 30 to 7 AM October 1, 2009

7 PM October 1 to 7 AM October 2, 2009

7 PM October 4 to 7 AM October 5, 2009

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

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sights remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

2. Mainstem Columbia River

a. SEASON #2: Immediately - 6 PM September 30, 2009
7 AM - 7 PM October 5, 2009

b. AREA: SMCRA 1A, 1B and 1C (Zones 1 - 3)

c. GEAR: 6-inch maximum mesh size. Unslackened floater gillnet. Drift gillnets only. Monofilament gear is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sights remain closed for sturgeon harvest. It is unlawful to fail to return immediately to The water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

3. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009.

Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. ALLOWABLE SALES: Salmon.

4. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

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

d. ALLOWABLE SALES: Salmon.

5. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights September 30 through October 30, 2009. Open hours 4 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

6. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000P Columbia River season
below Bonneville (09-221)

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

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

WSR 09-20-044**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed September 30, 2009, 1:49 p.m., effective October 1, 2009]

Effective Date of Rule: October 1, 2009.

Purpose: These amendments are required to comply with ESSB 5892 which authorizes state purchased health care programs to maximize appropriate prescription drug use in a cost-effective manner.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-4100 and 388-530-4150.

Statutory Authority for Adoption: RCW 74.04.050, 74.09.700, 74.08.090.

Other Authority: Chapter 575, Laws of 2009 (ESSB 5892).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009,

2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Emergency rule adoption is required in order for the department to fully meet the legislative mandate in ESSB 5892 for state purchased health care programs to maximize appropriate prescription drug use in a cost-effective manner by October 1, 2009. A CR-101 for the permanent rules was filed as WSR 09-18-058 on August 28, 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 1, Amended 2, 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 2, Repealed 0.

Date Adopted: September 18, 2009.

Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-4100 Washington preferred drug list (PDL). Under RCW 69.41.190 and 70.14.050, the department, and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL, that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee, and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will

be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug, which the department determines as covered, is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs that have been studied by the evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.

(11) When a brand name drug has been reviewed by the P&T committee, the department may immediately designate an available, less expensive, generic equivalent as a preferred drug.

(12) The dispensing of a brand name drug in a drug class on the Washington PDL as a client's first choice of treatment within that therapeutic class may be subject to restrictions under WAC 388-530-4125 and 388-530-4150(8).

NEW SECTION

WAC 388-530-4125 Generics first for a client's first course of treatment. The department uses point-of-sale (POS) claim messaging to communicate to pharmacies to use a preferred generic for the client's first choice of treatment in specific drug classes.

(1) The department may require preferred generic drug(s) on the Washington preferred drug list (PDL) be used before any brand name drugs for a client's first course of treatment within that therapeutic class of drugs, when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000, has reviewed the drug class and recommended to the department that the drug class is appropriate to require generics as a client's first choice of treatment.

(2) Only preferred generics will be covered for a client's first course of treatment in the specific drug classes on the Washington PDL reviewed by the DUR board, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred and nonpreferred brand name drugs in the specific drug classes on the Washington PDL reviewed by the DUR board will be subject to authorization to establish medical necessity according to WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

WAC 388-530-4150 Therapeutic interchange program (TIP). This section contains the department's rules for the endorsing practitioner therapeutic interchange program

(TIP). TIP is established under RCW 69.41.190 and 70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

- (a) Within therapeutic classes on the Washington PDL;
- (b) Studied by the evidence-based practice center(s);
- (c) Reviewed by the pharmacy and therapeutics (P&T) committee; and
- (d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) When the ~~((pharmacy and therapeutics (P&T)))~~ committee determines that TIP does not apply to the therapeutic class on the PDL; or

(b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner, under the provisions of chapter 182-50 WAC and RCW 69.41.190(2).

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) With the exception of subsection (7) and (8) of this section, when an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage ~~(-and samples))~~):

(a) Antipsychotic;

(b) Antidepressant;

(c) Antiepileptic;

~~(d)~~ Chemotherapy;

~~((d))~~ (e) Antiretroviral;

~~((e))~~ (f) Immunosuppressive; or

~~((f))~~ (g) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(7) The department may impose nonendorsing status on an endorsing practitioner only under the following circumstances:

(a) The department runs three quarterly reports demonstrating that, within any therapeutic class of drugs on the Washington PDL, the endorsing practitioner's frequency of prescribing DAW varies from the prescribing patterns of the endorsing practitioner's department-designated peer grouping with a ninety-five percent confidence interval; and

(b) The medical director has:

(i) Delivered by mail to the endorsing practitioner the quarterly reports described in subsection (7)(a) of this section which demonstrate the endorsing practitioner's variance in prescribing patterns; and

(ii) Provided the endorsing practitioner an opportunity to explain the variation in prescribing patterns as medically necessary under WAC 388-501-0165; or

(iii) Provided the endorsing practitioner two calendar quarters to change his or her prescribing patterns to align with those of the department-designated peer groupings.

(c) The restrictions imposed under subsection (7) will remain in effect until the endorsing practitioner can demonstrate he or she no longer varies in comparison to the endorsing practitioner's department designated peer-grouping over a period of four calendar quarters, with a ninety-five percent confidence interval.

(8) For a client's first course of treatment within a therapeutic class of drugs, the endorsing practitioners' option to write DAW does not apply when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(b) The drug use review (DUR) board established under WAC 388-530-4000, has reviewed the drug class and recommended to the department that the drug class is appropriate to require generics as a client's first course of treatment.

(9) The endorsing practitioner may submit justification to the department for the medical necessity of the brand name drug for the client's first course of treatment. The department reviews the justification and establishes medical necessity under WAC 388-501-0165.

WSR 09-20-052

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 09-231—Filed October 1, 2009, 2:27 p.m., effective October 3, 2009]

Effective Date of Rule: October 3, 2009.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to protect naturally spawning fall chinook. This section is the primary spawning area for fall chinook on the lower Cowlitz. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 1, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Cowlitz River. Notwithstanding the provisions of WAC 232-28-619, effective October 3, through December 31, 2009, it is unlawful to retain adult Chinook salmon in those waters of the Cowlitz River from Blue Creek upstream to Mill Creek.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2010:

WAC 232-28-61900G Exceptions to statewide rules—Cowlitz River.

WSR 09-20-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-233—Filed October 2, 2009, 3:48 p.m., effective October 2, 2009, 3:48 p.m.]

Effective Date of Rule: Immediately.

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

and wildlife commission policy guidance for Columbia River fisheries.

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

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

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

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

Reasons for this Finding: Rescinds the coho-directed fishing period scheduled for October 5, 2009. Coho catch to date has been greater than expected. This action will reduce the risk of exceeding ESA impacts on lower Columbia River coho. The seasons are consistent with the 2008-2017 *U.S. v. Oregon Management Agreement*, the 2009 non-Indian salmon allocation agreement, and the 2006-2009 sturgeon accord. The regulation is consistent with compact action of September 29, and October 2, 2009. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively

by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 2, 2009.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-33-01000R Columbia River season below Bonneville. Notwithstanding the provisions of WAC 220-33-010, and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

1. Mainstem Columbia River

a. SEASON: 7 PM October 4 to 7 AM October 5, 2009

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

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

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

e. ALLOWABLE SALES: Salmon and white sturgeon (43-54 inch fork length). A maximum of five (5) white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The sturgeon possession/sales limit applies to mainstem fisheries only. Select Area fishing sites remain closed for sturgeon harvest. It is unlawful to fail to return immediately to the water any sturgeon taken in excess of any commercial catch or possession limits prescribed by department rule.

2. Blind Slough/Knappa Slough Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009.

Open hours are 6 PM - 8 AM.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is defined by markers. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: 9 3/4-inch maximum mesh size. Gillnet. Monofilament gear is allowed. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

d. ALLOWABLE SALES: Salmon.

3. Tongue Point/South Channel Select Area.

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 30, 2009. Open hours 4 PM - 8 AM.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent jurisdiction waters.

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

d. ALLOWABLE SALES: Salmon.

4. Deep River Select Area.

a. SEASON: Monday, Tuesday, Wednesday and Thursday nights September 30 through October 30, 2009. Open hours 4 PM - 9 AM.

b. AREA: The Deep River Select Area. Concurrent jurisdiction waters extend downstream of the Highway 4 Bridge.

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

d. ALLOWABLE SALES: Salmon.

5. Quick Report: 24-hour quick reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick report requirement applies to all seasons described above (Columbia River and Select Areas).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000Q Columbia River season
below Bonneville (09-230)

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

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

WSR 09-20-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-234—Filed October 5, 2009, 4:05 p.m., effective October 5,
2009, 4:05 p.m.]

Effective Date of Rule: Immediately.

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

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

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

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

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

Reasons for this Finding: Allows sales of fish caught during the Yakama Nation tributary in Drano Lake. Harvest of Upriver Bright chinook and Group B steelhead is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on May 26, September 25, and October 2, 2009. Conforms state rules with tribal rules. There is insufficient time to adopt permanent rules.

New regulations for 2009 include fisheries that are described in the MOA between Washington state and the Yakama Nation. Yakama Nation tribal members will be

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

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

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

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

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

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

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

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

Date Adopted: October 5, 2009.

Philip Anderson
Director

NEW SECTION

WAC 220-32-05100Y Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess

salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon for commercial purposes in Columbia River Salmon Management Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, except as provided in the following subsections; and the same prohibitions apply in the White Salmon River, and Klickitat River and Drano Lake (Little White Salmon River), except that individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, yellow perch, catfish, bass or sturgeon under the following provisions, pursuant to lawfully enacted tribal rules:

1. Mainstem Columbia River above Bonneville Dam

- a) SEASON: Immediately until further notice.
- b) AREA: Zone 6 (SMCRA 1F, 1G, 1H).
- c) GEAR: Hoop nets, dip bag nets, and rod and reel with hook-and-line.

2. Columbia River Tributaries above Bonneville Dam

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

b) AREA: White Salmon and Klickitat rivers and Drano Lake (Little White Salmon River)

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

3. Mainstem Columbia River below Bonneville Dam

a) SEASON: Immediately until further notice, and only under the conditions in the Memo of Agreement (MOA) titled "2007 Memorandum of Agreement Between the Yakama Nation and Washington Department of Fish and Wildlife Regarding Tribal Fishing Below Bonneville Dam" the area below Bonneville Dam is open for commercial sales only for enrolled Yakama Nation members and only during those times that commercial sales are allowed in Zone 6 (SMCRA 1F, 1G, 1H).

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

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

4. SANCTUARIES: Standard river mouth and dam sanctuaries applicable to these gear types.

5. ALLOWABLE SALES: Chinook, coho, steelhead, sockeye, walleye, carp, yellow perch, catfish, bass and shad may be sold or retained for subsistence. Sturgeon may not be sold, Sturgeon between 43-54 inches in fork length in The Dalles and John Day pools (SMCRA 1G, 1H) may be retained for subsistence. Sturgeon between 38-54 inches in fork length in the Bonneville pool (SMCRA 1F) may also be retained for subsistence. Sturgeon caught below Bonneville Dam may NOT be retained and may NOT be sold. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE Property for sale.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. (09-229)

**WSR 09-20-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 09-220—Filed October 6, 2009, 12:57 p.m., effective October 7, 2009]

Effective Date of Rule: October 7, 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 and 77.04.020.

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

Reasons for this Finding: A large number of hatchery steelhead are returning to the Columbia and Snake River basins. Only a small number of these returning hatchery steelhead are needed for broodstock purposes, therefore all excess hatchery steelhead can be harvested. Removal of excess hatchery steelhead will reduce potential adverse effects on Endangered Species Act listed wild steelhead. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 6, 2009.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Grande Ronde and Snake rivers. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules and closed areas in WAC 232-28-619 remain in effect:

(1) Grande Ronde River - from the County Road Bridge to the Oregon state line, effective 12:01 a.m. October 7, 2009, until further notice, special daily limit of five hatchery steelhead.

(2) Snake River - from the mouth upstream to the Oregon border (including the boundary waters with Idaho). Effective 12:01 a.m. October 7, 2009, until further notice, special daily limit of five hatchery steelhead; except only three may be equal to or greater than 32 inches in length.

Date Adopted: October 6, 2009.

Philip Anderson
DirectorNEW SECTION

WAC 220-56-33000F Crab—Areas and seasons. Notwithstanding the provisions of WAC 220-56-33000F, effective immediately through January 2, 2010, a person may fish for crab for personal use in Marine Area 12, Wednesdays through Saturdays only.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 3, 2010:

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

WSR 09-20-087
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 09-232—Filed October 6, 2009, 3:29 p.m., effective October 6,
2009, 3:29 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This emergency rule is necessary until permanent rules take effect for the harvest of crab in Marine Area 12.

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.