

WSR 13-10-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-73—Filed April 17, 2013, 4:07 p.m., effective April 17, 2013,
4:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-04000Y and 220-52-04600K; and
amending WAC 220-52-046.

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: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: April 17, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-04600N Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line

connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Klipsan Beach and the U.S./Canada Border, including Grays Harbor: Open.

(4) The Quinalt Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 a.m., May 1, 2013, from the area shoreward of a line approximating the 27-fathom depth curve between the mouth of the Copalis River (47°08.00) and Split Rock (47°24.50). This area will be closed until further notice. This SSMA is described by the following coordinates:

- Northeast Corner 47°24.50 N. Lat. 124°20.00 W. Lon.
(Split Rock):
- Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.
- Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.
- Southeast Corner 47°08.00 N. Lat. 124°11.20 W. Lon.
(Copalis River):

(5) It is unlawful for a vessel to use more than 100 pots in the area between Split Rock (47°24.50) and Raft River (47°28.00) shoreward of a line approximating the 27-fathom depth curve from 8:00 a.m. May 1, 2013, until 8:00 a.m. May 31, 2013. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area, by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(6) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2013. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

- Northeast Corner 47°58.00' N. Lat. 124°40.40' W. Lon.
(Cape Johnson)
- Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.
- Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.
- Southeast Corner 47°40.50' N. Lat. 124°24.43' W. Lon.
(Destruction Island):

(7) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2013, until 8:00 a.m. May 31, 2013. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area, by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(8) All other provisions of the permanent rule remain in effect.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000Y	Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (13-34)
WAC 220-52-04600K	Coastal crab seasons (13-34)

WSR 13-10-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-72—Filed April 18, 2013, 4:26 p.m., effective April 24, 2013, 12:01 a.m.]

Effective Date of Rule: April 24, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 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: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 18, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000V Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

1. Effective 12:01 a.m. April 26 through 11:59 a.m. April 29, 2013, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

2. Effective 12:01 a.m. April 24 through 11:59 a.m. April 30, 2013, razor clam digging is allowed in Razor Clam Area 3. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. April 26 through 11:59 a.m. April 28, 2013, razor clam digging is allowed in Razor Clam Area 4. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

4. Effective 12:01 a.m. April 26 through 11:59 a.m. April 29, 2013, razor clam digging is allowed in Razor Clam Area 5. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 30, 2013:

WAC 220-56-36000V	Razor clams—Areas and seasons.
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WSR 13-10-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-75—Filed April 22, 2013, 3:29 p.m., effective May 3, 2013, 12:01 a.m.]

Effective Date of Rule: May 3, 2013, 12:01 a.m.

Purpose: Amend recreational 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: This rule change is necessary to ensure a safe and successful event. The fish will be planted one day prior to the event to acclimate them before the event. Fish will be placed into netted areas along the shoreline of the

pond. On the day of the event, preregistered kids will be allowed to fish within these netted areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 22, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900U Exceptions to statewide rules—Kliline Pond (Clark Co.) Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. May 3 through 3:00 p.m. May 4, 2013, it is unlawful to fish in those waters of Kliline Pond, except as provided in this section:

(a) Open to fishing 8:00 a.m. to 3:00 p.m. May 4, 2013, in the netted area, to anglers participating in the Youth Fishing event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 4, 2013:

WAC 232-28-61900U	Exceptions to statewide rules—Kliline Pond (Clark Co.)
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WSR 13-10-020
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 23, 2013, 9:28 a.m., effective April 26, 2013]

Effective Date of Rule: April 26, 2013.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, in order to comply with the requirements of SSB 6384 (related to community access services); to add dental services as a waiver service option; and to align this chapter with amendments to chapter 388-828 WAC for community access services. The program continues working with mental health and other stakeholders to finalize language to reflect

the developmental disabilities administration (DDA) home and community based services (HCBS) waivers prior to permanent adoption.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0505, 388-845-0800, 388-845-0820, 388-845-1110, 388-845-1105, 388-845-1150, 388-845-1400, 388-845-1410, 388-845-2110, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and 34.05.350 (1)(c) Emergency rules and amendments.

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: The amendments in this filing were originally adopted by emergency rule on September 1, 2012, in order to add dental care as an additional HCBS waiver service and to modify community access services as required by SSB 6384. Because changes to department rules regarding HCBS waivers need to be coordinated with the Centers for Medicare and Medicaid Services, and because related rules in chapter 388-828 WAC need amendment, these amendments could not be adopted as permanent before the expiration of the previous emergency filing. The department is in the process of adopting these amendments as permanent rules and continues stakeholder work to ensure rule appropriately reflects DDA HCBS waivers.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 17, 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 2, Amended 17, Repealed 0.

Date Adopted: April 19, 2013.

Katherine I. Vasquez
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 13-11 issue of the Register.

WSR 13-10-021
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-71—Filed April 23, 2013, 10:21 a.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-24-040.

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

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

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

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

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

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

Date Adopted: April 23, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open: May 1 through June 30, 2013.

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

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

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

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. **Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 902-2739 or by email at Douglas.Milward@dfw.wa.gov with Area fished, total Chinook and halibut catch on board, and destination.** Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

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

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

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

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

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

numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

Reviser's note: The typographical 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.

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

WSR 13-10-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-74—Filed April 23, 2013, 10:24 a.m., effective April 23, 2013, 10:24 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-620 and 232-28-621.

Statutory Authority for Adoption: RCW 77.12.045, 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 department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: April 23, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62000U Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of

WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 1:** May 1 through June 7: Closed. June 8 through June 21: Daily limit of 2 salmon, release coho and wild Chinook. June 22 until further notice: Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(2) **Catch Record Card Area 2:** May 1 through June 7: Closed. June 8 through June 22: Daily limit of 2 salmon, release coho and wild Chinook. June 23 until further notice: Open Sundays through Thursdays only, daily limit of 2 salmon, of which not more than one may be a Chinook salmon, release wild coho.

(3) **Catch Record Card Area 3:** May 1 through June 21: Closed, except open May 10, May 11, May 17, and May 18: daily limit of 2 salmon, release coho and wild Chinook. June 22 through June 28: daily limit of 2 salmon, release coho and wild Chinook. June 29 until further notice: daily limit of 2 salmon plus 2 additional pink salmon, release wild coho.

(4) **Catch Record Card Area 4:** May 1 through June 21: Closed, except open May 10, May 11, May 17, and May 18: daily limit of 2 salmon, release coho and wild Chinook. June 22 through June 28: daily limit of 2 salmon, release coho and wild Chinook. June 29 until further notice: daily limit of 2 salmon plus 2 additional pink salmon, release wild coho salmon. Waters east of a true north-south line through Sail Rock are closed through July 31, release Chinook salmon caught east of the Bonilla-Tatoosh line beginning August 1, release chum salmon beginning August 1.

NEW SECTION

WAC 232-28-62100U Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 8-2:** May 1 through July 31 are closed, except: Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point are open only from Friday through 11:59 a.m. the following Monday of each week, May 31 through June 14 and June 16 until further notice: Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(2) **Catch Record Card Area 9:** July 16, 2013, until further notice: Closed south of a line from Foulweather Bluff to Olele Point, except it is permissible to fish from shore between the southern and the northern boundaries of Salisbury Point Park.

(3) **Catch Record Card Area 10:** Immediately until further notice, waters of Elliott Bay east of a line from West Point to Alki Point: Closed, except waters north of a line from Jack Block Park through the north end of Harbor Island open August 16, 2013, until further notice, Friday through Sunday only of each week - Daily limit 2 salmon plus 2 addi-

tional pink salmon. Release Chinook and chum. Bait prohibited. Hooks must measure 1/2" or less from point to shank.

(4) **Catch Record Card Area 10:** Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White: Daily limit of 3 salmon plus 1 additional pink salmon, July 1 until further notice. Release wild Chinook. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing, beginning July 1.

(5) **Catch Record Card Area 12:** Waters north of a line true east from Broad Spit: open August 16 until further notice, daily limit 4 coho salmon.

(6) **Catch Record Card Area 13:** July 1 until further notice: Daily limit of 2 salmon plus 2 additional pink salmon. Release wild coho and wild Chinook.

(7) **Catch Record Card Area 13:** Fox Island Public Fishing Pier, effective July 1 until further notice: 2 additional pink salmon may be retained as part of the daily limit.

NEW SECTION

WAC 220-56-13600A Dash Point Dock public fishing pier. Effective immediately until further notice, it is unlawful to fish for or possess food fish or shellfish taken within 100 yards of the Dash Point Dock public fishing pier except while fishing from the Dash Point Dock public fishing pier. Violation of this section is an infraction, punishable under RCW 77.15.160.

**WSR 13-10-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-76—Filed April 23, 2013, 10:26 a.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-255.

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 rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 23, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-25500R Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-250 and WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1** - Open May 3, 2013, until further notice. Fridays through Sundays only. It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish or Pacific Cod when halibut are on board.

(2) **Catch Record Card Area 2** - Open May 5, through May 21, 2013, Sundays and Tuesdays only. See (i) and (ii) below for additional details.

(i) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 5, 2013, seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long
47°25.67 N. lat, 124°34.79 W. long
47°12.82 N. lat, 124°29.12 W. long
47°58.00 N. lat, 124°24.24 W. long

(ii) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as described in (2) above.

(3) **Catch Record Card Areas 3 and 4** - Open May 9 through May 18, 2013, Thursdays and Saturdays only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to 48°11'N., 125°11'W.; thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(i) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, from May 1, 2013, until further notice. Except, on days open to the Pacific halibut fishery in these areas, lingcod, sablefish

and Pacific cod can be retained seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.
 48°23.6'N. lat., 124°44.9'W. long.
 48°18.6'N. lat., 124°43.6'W. long.
 48°18.6'N. lat., 124°48.2'W. long.
 48°10.0'N. lat., 124°48.8'W. long.
 48°02.4'N. lat., 124°49.3'W. long.
 47°37.6'N. lat., 124°34.3'W. long.
 47°31.7'N. lat., 124°32.4'W. long.

(4) **Catch Record Card Area 5** - Open May 23 through May 26, 2013, Thursday through Sunday only. Open May 30 through June 1, 2012, Thursday through Saturday. Open Saturday June 8, 2013.

(5) **Catch Record Card Areas 6, 7, 8, 9 and 10** - Open May 2 through May 4, 2013, Thursday through Saturday. Open May 16 through May 18, 2013, Thursday through Saturday. Open May 23 through May 26, 2013, Thursday through Sunday. Open May 30 and 31, 2013, Thursday and Friday.

(6) **Catch Record Card Areas 11, 12, and 13** - Closed.

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

(8) All other permanent rules remain in effect.

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

WSR 13-10-024
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-77—Filed April 23, 2013, 10:29 a.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900V and 232-28-62000V; and amending WAC 232-28-619 and 232-620 [232-28-620].

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

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

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

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

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

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

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

Date Adopted: April 23, 2013.

Philip Anderson

Director

NEW SECTION

WAC 232-28-61900V Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

Chehalis River (Grays Harbor County), including all channels, sloughs, and interconnected waterways: Confluence with the Skookumchuck River upstream to Hwy 6 Bridge at Adna: Salmon: closed May 1 through June 30.

NEW SECTION

WAC 232-28-62000V Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Willapa Bay (Catch Record Card Area 2-1):** May 1 through June 7: Closed. June 8 through July 31: Open concurrent with Area 2 when Area 2 is open for salmon angling, Area 2 rules apply.

(2) **Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line):** May 1 through June 7: Closed. June 8 until further notice: Open concurrent with Area 2 when Area 2 is open for salmon angling, Area 2 rules apply.

REPEALER

The following sections of the Washington Administrative Code are repealed effective August 1, 2013:

WAC 232-28-61900V Freshwater exceptions to statewide rules.

WAC 232-28-62000V Coastal salmon—Saltwater seasons and daily limits.

WSR 13-10-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-81—Filed April 25, 2013, 10:29 a.m., effective May 1, 2013,
 7:00 a.m.]

Effective Date of Rule: May 1, 2013, 7:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-52-05100X and 220-69-24000B; and
 amending WAC 220-52-051, 220-52-075, and 220-69-240.

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 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for nonspot shrimp; (2) opens a Region 1 beam trawl area on May 16; and (3) reflects changes to the shrimp catch-reporting and purchase-reporting requirements. 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 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: April 25, 2013.

Lori Pruess
 for Philip Anderson
 Director

NEW SECTION

WAC 220-52-05100Y 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 1A, 1B, 1C, 2E, 2W, 3, 4, and 6 are open to the harvest of all non-spot

shrimp species, effective immediately, until further notice, except as provided for in this section:

i) In Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 22A, all waters inside and bounded by a line projected from Blakely Marina on the northwest corner of Blakely Island to Upright Head on Lopez Island, following the shoreline southerly on Lopez Island to intersect a line projected due west from Bald Bluff on Blakely Island, are closed until 7:00 a.m. June 16, 2013.

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

iii) All waters of Shrimp Management Area 1A north of a line projected at 48°.31.5' N latitude are closed.

(b) It is unlawful to pull shellfish pots in more than one catch area per day.

(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, effective 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) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open, effective immediately, until further notice.

(c) That portion of Catch Area 22A within SMA 1B will open at 7:00 a.m. May 16, 2013, until further notice.

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

NEW SECTION

WAC 220-52-07500L Shellfish harvest logs. Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp_report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360.796.0108. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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

NEW SECTION

WAC 220-69-24000C Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost

shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text message, e-mail or FAX. Text message and e-mail reports must be submitted to shrimpreport@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360.586.8408. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW [77.15.560](#).

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

REPEALER

The following sections of the Washington Administrative Code are repealed effective 7:00 a.m. May 1, 2013.

WAC 220-69-24000B	Duties of commercial purchasers and receivers. (13-01)
WAC 220-52-05100X	Puget Sound shrimp beam trawl fishery—Season. (13-63)

WSR 13-10-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-78—Filed April 25, 2013, 10:45 a.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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 implement regulations for the Columbia River tributaries that were adopted during the recent North of Falcon process. These rules are interim until permanent rules take effect.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 25, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Y Freshwater exceptions to statewide rules—Columbia River and tributaries. Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2013, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Columbia River from the Megler-Astoria Bridge to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank: From July 1 through July 31, release adult Chinook and sockeye.

Columbia River from a line projected line from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank to the I-5 Bridge: From May 16 through June 15 and July 1 through July 31, release adult Chinook and sockeye.

Columbia River from I-5 Bridge to Bonneville Dam: Effective July 1 through July 31, release adult Chinook and sockeye.

Columbia River from Bonneville Dam to the Washington/Oregon border 17 miles upstream from McNary Dam:

(i) Effective immediately through May 5, daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 can be adults or 1 of each. Release all wild Chinook and wild steelhead. Salmon minimum size is 12 inches.

(ii) Bank fishing only from Bonneville Dam to Tower Island powerlines located approximately 6 miles below The Dalles Dam.

Kalama River from boundary markers at the mouth to 1,000 feet below the fishway at upper salmon hatchery:

(a) Effective immediately through July 31, release all Chinook.

(b) Until further notice, stationary gear restriction has been rescinded.

Lewis River (Clark/Cowlitz County) from mouth to mouth of East Fork: Effective immediately through July 31, release all Chinook.

Lewis River, North Fork (Clark/Cowlitz County) from mouth of East Fork to Johnson Creek: Effective immediately through July 31, release all Chinook.

Lewis River, North Fork (Clark/Cowlitz County) from Johnson Creek to overhead powerlines below Merwin Dam:

(a) Effective immediately through May 31, closed to all fishing.

(b) Effective immediately through July 31, release all Chinook.

(c) Trout: Effective June 1 until further notice, catch and release, except up to 2 hatchery steelhead may be retained.

(d) Other game fish: Effective June 1, statewide minimum size and daily limit are in effect.

(e) Night closure and anti-snagging rule will be in effect June 1 until further notice.

Washougal River (Clark County) from mouth to Salmon Falls: Until further notice, stationary gear restriction has been rescinded.

Wind River (Skamania County) from mouth (boundary/line markers) to 400 feet below Shipherd Falls:

(a) Effective immediately through July 31, daily limit is 1 salmon or hatchery steelhead. Release wild Chinook.

(b) Until further notice, the two-pole endorsement has been rescinded.

Wind River from 100' above Shipherd Falls to Moore Bridge: Until further notice, closed to all fishing.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2013:

WAC 232-28-61900W Exceptions to statewide rules—Lewis and Kalama rivers. (13-29)

**WSR 13-10-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-79—Filed April 25, 2013, 4:09 p.m., effective April 26, 2013]

Effective Date of Rule: April 26, 2013.

Purpose: Amend recreational 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: Based on the preseason prediction for a relatively small chinook salmon return, Snake

River fisheries in each of three zones are open for two days per week. This enables managers to comply with Endangered Species Act restrictions and limited harvest allocations available in 2013. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 25, 2013.

Philip Anderson
Director

NEW SECTION

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

(1) Effective April 26, 2013, until further notice, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge at Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam. Open Fridays and Saturdays only. Daily limit of five hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(2) Effective April 28, 2013, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. Minimum size for Chinook is 12 inches in length. This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Open Sundays and Mondays only. Daily limit of five

hatchery Chinook, of which not more than one may be an adult Chinook.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) When fishing along "the wall" and walkway area upstream of the juvenile fish bypass return pipe below Little Goose Dam, the daily limit is one adult hatchery Chinook and one hatchery jack salmon. Anglers must cease fishing when the one allowed adult is retained. Minimum size for Chinook is 12 inches in length.

(3) Effective April 28, 2013, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from the intersection of Steptoe Canyon Road with Wawawai River Road on the Whitman County shore, upriver approximately 12 miles to the Idaho state line (from the east levee of the Greenbelt boat launch in Clarkston, northwest across the Snake River to the WA/ID boundary marker on the Whitman County shore). Open Sundays and Mondays only. Daily limit of five hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be release immediately, unharmed.

(b) Hooks must be barbless when fishing for all species, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

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

WSR 13-10-044
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed April 26, 2013, 9:40 a.m., effective April 26, 2013, 9:40 a.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the health care authority (HCA) reduced its budget expenditures for fiscal year 2011 and 2012 by reducing or eliminating a number of optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in

chapter 182-501 WAC and WAC 182-502-0160 are being amended to reflect and support these program cuts.

Citation of Existing Rules Affected by this Order: Amending WAC 182-501-0050, 182-501-0060, 182-501-0065, 182-501-0070, and 182-502-0160.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Chapter 564, Laws of 2011 (2ESSHB [2E2SHB] 1738).

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; 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 year 2009, 2010, 2011, 2012 or 2013, 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: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding for the benefits was eliminated effective January 1, 2011, as part of these regulatory amendments. HCA is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 10-22-12 [10-22-121]. HCA has completed a stakeholder review and will filing [file] the CR-102 in May 2013.

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

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

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

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

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

Date Adopted: April 26, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0050 Health care general coverage. WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 describe the health care services available to a client on a fee-for-service basis or to a client enrolled in a managed care organization (MCO) (defined in WAC ~~((388-538-050))~~ 182-538-050). For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. WAC ~~((388-501-0070))~~ 182-501-0070 describes noncovered services.

(1) Health care service categories listed in WAC ~~((388-501-0060))~~ 182-501-0060 do not represent a contract for health care services.

(2) For the provider to receive payment, the client must be eligible for the covered health care service on the date the health care service is performed or provided.

(3) Under the ~~((department's))~~ agency's or its designee's fee-for-service programs, providers must be enrolled with the ~~((department))~~ agency or its designee and meet the requirements of chapter ~~((388-502))~~ 182-502 WAC to be paid for furnishing health care services to clients.

(4) The ~~((department))~~ agency or its designee pays only for the health care services that are:

(a) ~~((Within the scope of))~~ Included in the client's ((medical program)) health care benefits package as described in WAC 182-501-0060;

(b) Covered - See subsection (9) of this section;

(c) Ordered or prescribed by a health care provider who meets the requirements of chapter ~~((388-502))~~ 182-502 WAC;

(d) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(e) Submitted for authorization, when required, in accordance with WAC ~~((388-501-0163))~~ 182-501-0163;

(f) Approved, when required, in accordance with WAC ~~((388-501-0165))~~ 182-501-0165;

(g) Furnished by a provider according to chapter ~~((388-502))~~ 182-502 WAC; and

(h) Billed in accordance with ~~((department))~~ agency or its designee program rules and the ~~((department's))~~ agency's current published billing instructions and numbered memoranda.

(5) The ~~((department))~~ agency or its designee does not pay for any health care service requiring prior authorization from the ~~((department))~~ agency or its designee, if prior authorization was not obtained before the health care service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The ~~((department))~~ agency does not reimburse clients for health care services purchased out-of-pocket.

(7) The ~~((department))~~ agency does not pay for the replacement of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under ~~((chapter 388-500 WAC))~~ specific agency program rules.

(8) The ~~((department's))~~ agency's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific ~~((department))~~ agency program rules.

(9) Covered health care services.

(a) Covered health care services are either:

(i) "Federally mandated" - Means the state of Washington is required by federal regulation (42 C.F.R. 440.210 and 220) to cover the health care service for medicaid clients; or

(ii) "State-option" - Means the state of Washington is not federally mandated to cover the health care service but has chosen to do so at its own discretion.

(b) The ~~((department))~~ agency or its designee may limit the scope, amount, duration, and/or frequency of covered health care services. Limitation extensions are authorized according to WAC ~~((388-501-0169))~~ 182-501-0169.

(10) Noncovered health care services.

(a) The ~~((department))~~ agency or its designee does not pay for any health care service~~((:~~

~~((i) That federal or state laws or regulations prohibit the department from covering; or~~

~~((ii))~~ listed as noncovered in WAC ((388-501-0070)) 182-501-0070 or in any other agency program rule. The ((department)) agency or its designee evaluates a request for a noncovered health care service only if an exception to rule is requested according to the provisions in WAC ((388-501-0160)) 182-501-0160.

(b) When a noncovered health care service is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exam and then ordered by a provider, the ~~((department))~~ agency or its designee evaluates the health care service according to the process in WAC ~~((388-501-0165))~~ 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC ~~((388-534-0100))~~ 182-534-0100 for EPSDT rules).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0060 Health care coverage—((Scope of covered categories of service)) Program benefits packages—Scope of service categories. ~~((1) This rule provides a list (see subsection (5)) of medical, dental, mental health, and substance abuse categories of service covered by the department under categorically needy (CN) medicaid, medically needy (MN) medicaid, Alien Emergency Medical (AEM), and medical care services (MCS) programs. MCS means the limited scope of care financed by state funds and provided to general assistance and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program clients.~~

~~((2) Not all categories of service listed in this section are covered under every medical program, nor do they represent a contract for services. Services are subject to the exclusions;~~

limitations, and eligibility requirements contained in department rules.

(3) Services covered under each listed category:

(a) Are determined by the department after considering available evidence relevant to the service or equipment to:

- (i) Determine efficacy, effectiveness, and safety;
- (ii) Determine impact on health outcomes;
- (iii) Identify indications for use;
- (iv) Compare alternative technologies; and
- (v) Identify sources of credible evidence that use and report evidence-based information.

(b) May require prior authorization (see WAC 388-501-0165), or expedited authorization when allowed by the department.

(c) Are paid for by the department and subject to review both before and after payment is made. The department or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The department does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the department, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the department as required under chapter 388-502 WAC;

(c) Are included in a department waiver program identified in chapter 388-515 WAC; or

(d) Are covered by a third-party payer (see WAC 388-501-0200), including medicare, if the third-party payer has not made a determination on the claim or has not been billed by the provider.

(5) **Scope of covered service categories.** The following table lists the department's covered categories of health care services:

• Under the four program columns (CN, MN, MCS, and AEM), the letter "C" means a service category is covered for that program, subject to any limitations listed in the specific medical assistance program WAC and department issuances.

• The letter "N" means a service category is not covered under that program.

• The letter "E" means the service category is available only if it is necessary to treat the client's emergency medical condition and may require prior authorization from the department.

• Refer to WAC 388-501-0065 for a description of each service category and for the specific program WAC containing the limitations and exclusions to services.

Service Categories	CN*	MN	MCS	AEM
(a) Adult day health	€	€	N	E
(b) Ambulance (ground and air)	€	€	€	E
(c) Blood processing/administration	€	€	€	E
(d) Dental services	€	€	€	E
(e) Detoxification	€	€	€	E

Service Categories	CN*	MN	MCS	AEM
(f) Diagnostic services (lab & x-ray)	€	€	€	E
(g) Family planning services	€	€	€	E
(h) Health care professional services	€	€	€	E
(i) Hearing care (audiology/hearing exams/aids)	€	€	€	E
(j) Home health services	€	€	€	E
(k) Hospice services	€	€	N	E
(l) Hospital services— inpatient/outpatient	€	€	€	E
(m) Intermediate care facility/services for mentally retarded	€	€	€	E
(n) Maternity care and delivery services	€	€	N	E
(o) Medical equipment, durable (DME)	€	€	€	E
(p) Medical equipment, nondurable (MSE)	€	€	€	E
(q) Medical nutrition services	€	€	€	E
(r) Mental health services	€	€	€	E
(s) Nursing facility services	€	€	€	E
(t) Organ transplants	€	€	€	N
(u) Out-of-state services	€	€	N	E
(v) Oxygen/respiratory services	€	€	€	E
(w) Personal care services	€	€	N	N
(x) Prescription drugs	€	€	€	E
(y) Private duty nursing	€	€	N	E
(z) Prosthetic/orthotic devices	€	€	€	E
(aa) School medical services	€	€	N	N
(bb) Substance abuse services	€	€	€	E
(cc) Therapy—occupational/physical/speech	€	€	€	E
(dd) Vision care (exams/lenses)	€	€	€	E

*Clients enrolled in the State Children's Health Insurance Program and the Children's Health Program receive CN scope of medical care.) (1) This rule provides a table that lists:

(a) The categorically needy (CN) medicaid, medically needy (MN) medicaid, and medical care services (MCS) programs (include incapacity-based medical care services and the medical component of the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program); and

(b) The benefits packages showing what service categories are included for each program.

(2) Within a service category included in a benefits package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefits package:

(a) Are determined, in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency or its designee.

(d) Are paid for by the agency or its designee and subject to review both before and after payment is made. The agency or its designee or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency or its designee does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or its designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency or its designee as required under chapter 182-502 WAC;

(c) Are included in an agency or its designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Other programs:

(a) Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).

(b) The following programs are not addressed in the table:

(i) Alien emergency medical (AEM) services (see chapter 182-507 WAC);

(ii) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790); and

(iii) Psychiatric indigent inpatient program (see WAC 182-550-2600).

(6) Scope of service categories. The following table lists the agency's categories of health care services.

(a) Under the CN and MN headings there are two columns. One addresses clients twenty years of age and younger and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program WAC and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program WAC containing the limitations and restrictions to services.

Service Categories	CN ¹ 20-	21+	MN 20-	21+	MCS
<u>Ambulance (ground and air)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Behavioral health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>Mental health (MH) inpatient care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>MH outpatient community care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y²</u>
• <u>MH psychiatric visits</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y³</u>
• <u>MH medication management</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>Substance use disorder (SUD) detoxification</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD diagnostic assessment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD residential treatment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD outpatient treatment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Blood/blood products/related services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Dental services</u>	<u>Y</u>	<u>Y⁴</u>	<u>Y</u>	<u>Y⁴</u>	<u>Y⁴</u>
<u>Diagnostic services (lab and X ray)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Health care professional services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing evaluations</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing aids</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Home health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospice services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Hospital services - Inpatient/outpatient</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>

Service Categories	CN ¹ 20-	21+	MN 20-	21+	MCS
<u>Intermediate care facility/services for persons with intellectual disabilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Maternity care and delivery services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, durable (DME)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, nondurable (MSE)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical nutrition services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Nursing facility services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Organ transplants</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Out-of-state services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Outpatient rehabilitation services (OT, PT, ST)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>Y</u>
<u>Oxygen/respiratory services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Personal care services</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Prescription drugs</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Private duty nursing</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Prosthetic/orthotic devices</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Psychological evaluation²</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Reproductive health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>School-based medical services</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Vision care - Exams, refractions, and fittings</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Vision hardware - Frames and lenses</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>

- ¹ Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.
- ² Restricted to incapacity-based MCS clients enrolled in managed care.
- ³ Incapacity-based MCS clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.
- ⁴ Restricted to those clients who meet the categorical requirements described in WAC 182-535-1060.
- ⁵ Only two allowed per lifetime.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0065 Health care coverage—Description of (~~covered~~) categories of service. This rule provides a brief description of the medical, dental, mental health, and substance (~~abuse~~) use disorder (SUD) service categories listed in the table in WAC (~~(388-501-0060)~~) 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category. (~~For Alien Emergency Medical (AEM) services, refer to WAC 388-438-0110.~~)

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in (~~(department)~~) agency rules:

(a) (~~(Adult day health—~~ Skilled nursing services, counseling, therapy (physical, occupational, speech, or audiology), personal care services, social services, general therapeutic activities, health education, nutritional meals and snacks, supervision, and protection. [~~WAC 388-71-0702 through 388-71-0776~~]

~~(b))~~ Ambulance(—)—Emergency medical transportation and ambulance transportation for nonemergency medical needs. (~~(WAC 388-546-0001 through 388-546-4000)~~) (e)) (WAC 182-546-0001 through 182-546-4000.)

(b) Behavioral health services - Crisis mental health services are available to state residents through the regional support networks (RSNs).

(i) Mental health inpatient care - Voluntary and involuntary admissions for psychiatric services. (WAC 182-550-2600.)

(ii) Mental health outpatient (community mental health) services - Nonemergency, nonurgent counseling. (WAC 182-531-1400, 388-865-0215, and 388-865-0230.)

(iii) Psychiatric visits. (WAC 182-531-1400 and 388-865-0230.)

(iv) Mental health medication management. (WAC 182-531-1400.)

(v) Substance use disorder detoxification. (WAC 182-508-0305 and 182-550-1100; WAC 182-556-0400(3).)

(vi) Substance use disorder diagnostic assessment. (WAC 182-508-0330.)

(vii) Substance use disorder residential treatment. (WAC 182-508-0310 through 182-508-0375; and WAC 182-556-0100.)

(viii) Substance use disorder outpatient treatment. (WAC 182-508-0310 through 182-508-0375; WAC 182-

533-0701 through 182-533-0730; WAC 182-556-0100 and 182-556-0400.)

(c) ~~Blood ((processing/administration—)), blood products, and related services~~ - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (([WAC 388-550-1400 and 388-550-1500])) (WAC 182-550-1400 and 182-550-1500.)

(d) ~~Dental services((—))~~ - Diagnosis and treatment of dental problems including emergency treatment and preventive care. (([Chapters 388-535 and 388-535A WAC])) (Chapters 182-535 and 182-535A WAC.)

(e) ~~((Detoxification—Inpatient treatment performed by a certified detoxification center or in an inpatient hospital setting. [WAC 388-800-0020 through 388-800-0035; and 388-550-1100])~~

(f)) ~~Diagnostic services((—))~~ - Clinical testing and imaging services. (([WAC 388-531-0100; 388-550-1400 and 388-550-1500])

(g) ~~Family planning services~~ - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. [WAC 388-532-530]

(h)) (WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.)

(f) ~~Health care professional services((—))~~ - Office visits, emergency oral health, emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, physiatry, and pulmonary/respiratory services; and allergen immunotherapy. (([Chapter 388-531 WAC])

(i)) (Chapter 182-531 WAC.)

(g) ~~Hearing ((care—)) evaluations~~ - Audiology; diagnostic evaluations; hearing exams and testing((; and hearing aids. [WAC 388-544-1200 and 388-544-1300; 388-545-700; and 388-531-0100])

(j)) (WAC 182-531-0100 and 182-531-0375.)

(h) ~~Hearing aids~~ - (Chapter 182-547 WAC.)

(i) ~~Home health services((—))~~ - Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (([WAC 388-551-2000 through 388-551-2220])

(k)) (WAC 182-551-2000 through 182-551-2220.)

(j) ~~Hospice services((—))~~ - Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (([WAC 388-551-1210 through 388-551-1850])

(l)) (WAC 182-551-1210 through 182-551-1850.)

(k) ~~Hospital services—Inpatient/outpatient((—))~~ - Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treat-

ment and diagnostic services; and outpatient or day surgery, and obstetrical services. (([Chapter 388-550 WAC]) (m)) (Chapter 182-550 WAC.)

(l) ~~Intermediate care facility/services for ((mentally retarded—)) persons with intellectual disabilities~~ - Habilitative training, health-related care, supervision, and residential care. (([Chapter 388-835 WAC]) (n)) (Chapter 388-835 WAC.)

(m) ~~Maternity care and delivery services((—))~~ - Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. (([WAC 388-533-0330]) (o)) (WAC 182-533-0300.)

(n) ~~Medical equipment, durable (DME)((—))~~ - Wheelchairs, hospital beds, respiratory equipment; ((prosthetic and orthotic devices;)) casts, splints, crutches, trusses, and braces. (([WAC 388-543-1100]) (p)) (Chapter 182-543 WAC.)

(o) ~~Medical equipment, nondurable (MSE)((—))~~ - Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, ((transcutaneous electrical nerve stimulators (TENS) supplies;)) and urological supplies. (([WAC 388-543-2800]) (q)) (Chapter 182-543 WAC.)

(p) ~~Medical nutrition services((—))~~ - Enteral and parenteral nutrition, including supplies. (([Chapters 388-553 and 388-554 WAC])

(r) ~~Mental health services~~ - Inpatient and outpatient psychiatric services and community mental health services. [Chapter 388-865 WAC]

(s)) (Chapters 182-553 and 182-554 WAC.)

(q) ~~Nursing facility services((—))~~ - Nursing, therapies, dietary, and daily care services. (([Chapter 388-97 WAC]) (t)) (Chapter 388-97 WAC.)

(r) ~~Organ transplants((—))~~ - Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (([WAC 388-550-1900 and 388-550-2000, and 388-556-0400])

(u)) (WAC 182-550-1900 and 182-556-0400.)

(s) ~~Out-of-state services((—Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. [WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-0500])~~

(v)) - See WAC 182-502-0120 for services out-of-state.

(t) ~~Outpatient rehabilitation services (OT, PT, ST)~~ - Evaluations, assessments, and treatment. (Chapter 182-545 WAC.)

(u) ~~Oxygen/respiratory services((—))~~ - Oxygen, oxygen equipment and supplies; oxygen and respiratory therapy, equipment, and supplies. (([Chapter 388-552 WAC]) (w)) (Chapter 182-552 WAC.)

(v) ~~Personal care services((—))~~ - Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (([WAC 388-106-0010, (([388-106-0300,

~~{388-106-10400, {388-106-10500, {388-106-10600, {388-106-10700, {388-106-10720 and {388-106-10900}}~~

~~((x)) 388-106-0200, 388-106-0300, 388-106-0600, 388-106-0700, 388-106-0745, and 388-106-0900.)~~

~~(w) **Prescription drugs**((—)) - Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (({WAC 388-530-1100})) (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.~~

~~((y)) (x) **Private duty nursing**((—)) - Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (({WAC 388-551-3000-})) (WAC 182-551-3000.) For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.~~

~~((z)) (y) **Prosthetic/orthotic devices**((—)) - Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (({WAC 388-543-1100}~~

~~((aa) **School medical services** - Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). [Chapter 388-537 WAC]~~

~~((bb) **Substance abuse services** - Chemical dependency assessment, case management services, and treatment services. [WAC 388-533-0701 through 388-533-0730; 388-556-0100 and 388-556-0400; and 388-800-0020]~~

~~((cc) **Therapy - Occupational/physical/speech** - Evaluations, assessments, and treatment. [WAC 388-545-300, 388-545-500, and 388-545-700]~~

~~((dd)) (WAC 182-543-1100.)~~

~~(z) **Psychological evaluation** - Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities. (WAC 388-865-0610.)~~

~~((aa) **Reproductive health services** - Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-530.)~~

~~((bb) **School-based medical services** - Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). (Chapter 182-537 WAC.)~~

~~((cc) **Vision care**((—)) - Eye exams, refractions, ((frames, lenses,)) fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (({WAC 388-544-0250 through 388-544-0550})) (WAC 182-531-1000.)~~

~~((dd) **Vision hardware** - Frames and lenses. (Chapter 182-544 WAC.)~~

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-501-0070 Health care coverage—Noncovered services. (1) The medicaid agency or its designee does

not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The ~~((department))~~ agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4)((-));

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related health care services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services (~~(for clients twenty years of age and younger)~~) as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care (~~(services)~~) hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR) or nonformulary justification (NFJ);

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

WAC 182-502-0160 Billing a client. (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a medicaid agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 182-501-0050 (4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable medicaid agency or agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the agency or agency-contracted MCO for medical assistance services furnished to clients. See 42 C.F.R. § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the agency or the client's MCO.

(c) A covered service when the agency or its designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 182-501-0050(9), or a noncovered service, defined in WAC 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at <http://hrs.dshs.wa.gov/mpforms.shtml>. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the agency or agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or its designee denies a request for a noncovered service other than a nonformulary drug and that the client may choose not to do so;

(viii) Specify that the client and their prescriber may request a nonformulary justification (NFJ) in accordance with WAC 182-530-2300 for a nonformulary drug and that the client may choose not to do so;

(ix) Specify that the client may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's or its designee denial of a request for prior authorization of a covered service and that the client may choose not to do so;

(x) Be completed only after the provider and the client have exhausted all applicable agency or agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding agency or agency designee denials of authorization for requested service(s); and

(xi) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the agency or the client's agency-contracted MCO and the ETR process as described in WAC 182-501-0160 or the NFJ process as described in WAC 182-530-2300 has been exhausted and the service(s) is denied;

(ii) Not covered by the agency or the client's agency-contracted MCO and the client has been informed of his or her right to an ETR or NFJ and has chosen not to pursue an ETR as described in WAC 182-501-0160 or the NFJ process as described in WAC 182-530-2300;

(iii) Covered by the agency or the client's agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the agency or its designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or

(iv) Covered by the agency or the client's agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the agency or its designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the agency or its designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the agency's or an agency-contracted MCO's patient review and coordination (PRC) program (WAC 182-501-0135) and receives nonemergency services from providers or health care facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 182-530-7700 (2)(a)(iii) are met;

(f) The service(~~s provided to a TAKE CHARGE or family planning only client are not within the scope of~~) is within a service category excluded from the client's benefits package. See WAC 182-501-0060;

(g) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the agency or its designee after being informed by the provider that he or she is not contracted with the agency or its designee and that the services offered will not be paid by the client's health care program; and

(i) An agency-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 182-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on health care expenses to become eligible for coverage under the medically needy program. An individual must incur health care expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the agency or its designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the agency or its designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 C.F.R. § 435.914(a) and defined in WAC 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the agency or its designee for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

- (i) Medical/dental charts;
- (ii) Radiological or imaging films; and
- (iii) Laboratory or other diagnostic test results.

(b) Missed, canceled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

WSR 13-10-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-82—Filed April 26, 2013, 12:35 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-128, 220-56-235, 220-56-240, 220-56-265, 220-56-310, and 220-55-220.

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 department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission. These rules are interim until permanent rules take effect.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 0.

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

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

Date Adopted: April 26, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-56-12800L Food fish fishing—Closed areas. Notwithstanding the provisions of WAC 220-56-128 and WAC 220-56-500, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Persons with disabilities who permanently use a wheelchair and have a designated harvester card under WAC 220-55-065 may fish from the ADA-accessible site at the

Hoodspout Salmon Hatchery, provided such persons follow all applicable rules and regulations of the adjoining waters of Marine Area 12.

2. Designated harvesters may fish from the ADA-accessible site with persons with disabilities who permanently use a wheelchair and have a designated harvester card, if room allows.

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

NEW SECTION

WAC 220-56-23500Z Possession limits—Bottomfish. Notwithstanding the provisions of WAC 220-56-235, effective May 1, 2013, until further notice, it is unlawful to fish for, retain, or possess sixgill, sevendill, or thresher sharks. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use:

(1) Marine Areas 1 through 3: 12 fish-limit, which includes a sub-limit of 10 rockfish, 2 lingcod, and 2 cabezon.

(2) Marine Area 4: 10-fish limit, which includes a sub-limit of 6 rockfish, black and blue only; 2 lingcod, and 1 cabezon. Cabezon minimum size limit is 18 inches.

(3) Marine Areas 5 through 11 and 13, Cabezon: Daily limit 1. The minimum size limit for cabezon is 18 inches.

NEW SECTION

WAC 220-56-24000H Daily limits forage fish and other foodfish not otherwise provided for. Notwithstanding the provisions of WAC 220-56-240, effective May 1, 2013, until further notice, it is unlawful for any person to retain more than the following quantities and sizes of food fish taken for personal use. Unless otherwise provided, other food-fish fishing is open the entire year:

(1) Forage fish:

(a) Catch Record Card Areas 1 through 4, 2.1 (Willapa Bay) and 2.2 (Grays Harbor), sardines and anchovies: 25 pounds total.

NEW SECTION

WAC 220-56-26500B Forage fish—Lawful gear. Notwithstanding the provisions of WAC 220-56-265, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In Marine Areas 1 through 4, 2.1 (Willapa Bay), and 2.2 (Grays Harbor), it is permissible to take anchovies or sardines using dip net, cast net, jigger gear, or by angling.

(2) It is unlawful for a fisher to operate cast-net gear unless the gear is in his or her immediate control. The fisher must have the retrieval cord in his or her hand at all times when the cast net is deployed. Mesh size for cast nets is limited to 1 inch maximum, and cast nets may be no larger than 10 feet in diameter.

NEW SECTION

WAC 220-56-31000Y Shellfish—Daily limits. Notwithstanding the provisions of WAC 220-56-310, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) In Marine Areas 1 through 3 and Marine Area 4 west of the Bonilla-Tatoosh line: Total weight 25 pounds of spot shrimp, with a maximum of 200 spot shrimp as part of the 25-pound daily limit.

NEW SECTION

WAC 220-55-22000E Two-pole endorsement. Notwithstanding the provisions of WAC 220-55-220, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

The use of two poles is allowed in the following waters:

A. Lake, Reservoir, or Pond

1. Adams County: Quail Lake
2. Douglas County: Grimes Lake
3. Ferry County: Long Lake
4. Grant County: Beda, Brookies, Dry Falls, Dusty, Homestead, Lenice, Lenore, Merry, and Nunnally lakes
5. Grays Harbor County: Damon, Promised Land, and Shye lakes, Vance Creek #2 Pond, and Wynoochee Reservoir
6. Island County: Lone Lake
7. Jefferson County: Anderson Lake
8. King County: Rattlesnake and Ravensdale lakes
9. Kittitas County: Easton Lake
10. Lewis County: Fort Borst Park Pond
11. Lincoln County: Coffeepot Lake
12. Okanogan County: Aeneas, Big Twin, Black, Blue (Sinlahekin Creek), Blue (near Wannacut Lake), Campbell, Chopaka, Cougar (Pasayten Wilderness), Davis, Ell, Green, Hidden, Lower Green, and Rat lakes
13. Pacific County: Middle Nemah, Mooses, and Owens lakes
14. Pend Oreille County: Browns and Muskegon lakes
15. San Juan County: Mountain Lake
16. Spokane County: Amber and Medical lakes
17. Stevens County: Bayley, McDowell, and Rigley lakes
18. Thurston County: Kennedy and McLane creeks

B. Columbia River from the Highway 395 Bridge at Pasco to Priest Rapids Dam from June 16 through July 31: All species except sturgeon.

C. Marine Area 10 (Seattle/Bremerton Area): Sinclair Inlet.

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

WSR 13-10-046
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-80—Filed April 26, 2013, 1:14 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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 department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission for sportfishing, and permanent rules that will be adopted by the department for recreational salmon fishing. The salmon rules were agreed to with resource comanagers at the North of Falcon proceedings. All of these rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 26, 2013.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Freshwater terminal gear restrictions: Terminal gear restrictions apply to all species, including salmon, unless otherwise provided.

2. Until further notice, the following waters are open the Saturday before Memorial Day:

Water Body

County

Bird Creek	Klickitat
Canyon Creek	Clark
Little White Salmon River	Skamania
Outlet Creek	Klickitat
Spring Cr. (Goldendale Hatchery)	Klickitat

3. Blue Creek (Lewis County), from mouth to posted sign above rearing pond outlet:

Open to all licensed anglers. Open for trout only June 1 until further notice.

4. Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

Salmon and trout handling rules apply, except effective immediately through June 15 in the mainstem Columbia from the Rocky Point/Tongue Point line upstream to OR/WA border, the rules apply only when fishing from vessels less than 30 feet in length (as substantiated by Coast Guard documentation or Marine Board registration).

5. Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County):

Salmon open year round.

6. Cowlitz River (Lewis County):

Closed waters from within a 100-foot radius of the new Cowlitz Trout Hatchery outfall structure, except anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card may fish within posted markers when adjacent waters are open.

7. Fort Borst Park Pond (Lewis County):

Open to all licensed anglers until further notice.

8. Green River (Cowlitz County):

From the mouth to 400 feet below the Toutle Hatchery water intake, open from the last Saturday in May through the first Friday in June. Selective gear rules apply. Release all trout, except anglers may retain up to 2 hatchery steelhead.

9. Kalama River (Cowlitz County):

Anglers may retain up to 2 hatchery steelhead from: (a) 1,000 feet above the fishway at the upper salmon hatchery, upstream to Summers Creek; (b) Summers Creek upstream to 6420 Road (about 1 mile above gate at end of county road).

10. Lewis River (Clark County):

Fishing with two poles is permissible from Railroad Bridge near Kuhns Road upstream to mouth of East Fork Lewis, so long as the angler possesses a two-pole endorsement.

11. Lewis River, North Fork (Clark/Skamania counties):

Fishing with two poles is permissible from mouth to Johnson Creek, so long as the angler possesses a two-pole endorsement.

12. Merwin Lake (Reservoir) (Clark/Cowlitz County):

Kokanee limit is 10. Kokanee do not count as part of the trout daily limit.

13. Rainey Creek (Lewis County), from the mouth to Highway 12:

Release cutthroat and rainbow trout except those having a clipped adipose fin and a healed scar at the location of the clipped fin. Trout limit 5.

14. Silver Creek (tributary to Cowlitz River) (Lewis County):

Trout minimum length is 14 inches.

15. Skate Creek (Lewis County):

Statewide general rules in effect. Release cutthroat.

16. Swift Reservoir (Skamania County):

Landlocked salmon rules apply: maximum length 15 inches.

17. Tilton River (Lewis County), from the mouth to West Fork:

Trout retention follows statewide general rules. Release cutthroat.

18. Toutle River, South Fork (Cowlitz County):

From the mouth to 4700 Road Bridge, open the last Saturday in May to the first Friday in June. Selective gear rules apply. Catch and release only, except anglers may retain up to 2 hatchery steelhead.

19. Vancouver Lake (Clark County):

From the flushing channel and the lake shoreline 400' east and west from the channel exit: Closed through May 31.

20. Washougal River (Clark Co):

From Mt. Norway Bridge upstream to Salmon Falls, anti-snagging rule and stationary gear restrictions are rescinded until further notice.

21. White Salmon River (Klickitat/Skamania counties):

From the county road bridge below the powerhouse upstream to Big Brothers Falls (river mile 16):

(a) Closed waters from Big Brothers Falls downstream 400 feet.

(b) Open the first Saturday in June until further notice.

(c) Selective gear rules apply.

22. Wind River (Skamania County):

(a) From 100 feet above Shipherd Falls to boundary marker approximately 800 yards downstream of Carson National Fish Hatchery, all tributaries are closed.

(b) Closed waters from Moore Bridge upstream to river source, including all tributaries.

manent rules that will be adopted by the department for recreational salmon fishing. The salmon rules were agreed to with resource comanagers at the North of Falcon proceedings. All of these rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 26, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Freshwater terminal gear restrictions: Terminal gear restrictions apply to all species, including salmon, unless otherwise provided.

2. It is permissible to fish from a floating device equipped with an internal combustion motor in the following waters:

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
American River	Yakima	
Box Canyon Creek	Kittitas	From waterfall approximately 2 miles upstream of mouth to USFS Road #4930 Bridge.
Bumping River	Yakima	From mouth to Bumping Reservoir
Cowiche Creek	Yakima	
De Roux Creek	Kittitas	Upstream of USFS Trail #1392 stream crossing.
Kachess River	Kittitas	
Naneum Creek	Kittitas	
Teanaway River, North Fork	Kittitas	
Tieton River	Yakima	
Umtanum Creek	Kittitas	

3. Until further notice, the following waters are open the Saturday before Memorial Day:

**WSR 13-10-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-84—Filed April 26, 2013, 1:19 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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 department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission for sportfishing, and per-

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Boulder Creek	Okanogan	Including tributaries not otherwise provided for.
Browns Creek	Pend Oreille	
Bumping River	Yakima	From Bumping Lake upstream.
Cedar Creek	Pend Oreille	Including tributaries.
Chikamin Creek	Chelan	
Chewuch (Chewack) River	Okanogan	From the mouth to Eight Mile Creek.
Deep Creek	Yakima	From the second bridge crossing upstream.
Entiat River	Chelan	Above Entiat Falls.
Icicle River (Creek)	Chelan	From the Leavenworth National Fish Hatchery rack upstream to Leland Creek.
Indian Creek	Pend Oreille	Including tributaries.
Indian Creek	Yakima	Upstream of the waterfall, approximately 6 miles upstream from the mouth.
Le Clerc Creek	Pend Oreille	Including tributaries.
Little Pend Oreille River	Stevens	Including all tributaries.
Little Spokane River	Spokane	Tributaries not otherwise provided for, and mainstem from the West Branch upstream.
Lost River	Okanogan	From the mouth of Monument Creek to the outlet of Cougar Lake.
Methow River (Burma)	Okanogan County	From County Road 1535 Bridge to Gold Creek; from Foghorn Dam to Weeman Bridge; tributaries not otherwise provided for.
Mill Creek	Pend Oreille	Including tributaries.
Nason Creek	Chelan	From Smith Brook to Stevens Creek.
Pend Oreille River tributaries	Pend Oreille	Those not otherwise provided for.
Phelps Creek	Chelan	From the mouth to the falls at river mile one.
Priest Lake tributaries	Pend Oreille	Including Upper Priest Lake tributaries, except those tributaries otherwise provided for.
Priest River tributaries	Pend Oreille	
Rock Creek	Adams/Whitman	From Endicott Road to the bridge on George Knott Road at Revere.
Rock Creek	Chelan	
Ruby Creek	Pend Oreille	Including tributaries from mouth to South Fork.
Salmon Creek, North and West Forks	Okanogan	
San Poil River	Ferry	From above the Colville Confederated Tribe of Indians Reservation northern boundary, upstream to the headwaters, including tributaries.
Sherman Creek	Ferry	From the mouth at Lake Roosevelt upstream to the hatchery boat dock.

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Sinlahekin Creek	Okanogan	From Palmer Lake upstream, and tributaries from Cecile Creek Bridge upstream.
Slate Creek	Pend Oreille	Including tributaries.
South Salmo River	Pend Oreille	Including tributaries.
Sullivan Creek	Pend Oreille	Including the tributaries from Mill Pond upstream.
Sullivan Lake Tributaries	Pend Oreille	Except those otherwise provided for.
Tacoma Creek	Pend Oreille	Including tributaries.
Tieton River, South Fork	Yakima	
Twisp River	Okanogan	From the mouth to War Creek.

4. No size restrictions or daily limit for bass, channel catfish, and walleye for the following waters:

Grande Ronde River (Asotin County), for all portions of the river and its tributaries that are open to game fish angling; Pataha Creek (Garfield County).

5. The following waters are open only to juvenile anglers and anglers with a disability who possess a designated harvester companion card only:

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Columbia Basin Hatchery Creek	Grant	
Columbia Park Pond	Benton	
Dayton Pond	Columbia	
Goose Creek	Lincoln	Within the City limits of Wilbur.
Kiwanis Pond	Kittitas	
Ping Pond	Grant	
Sarge Hubbard Park Pond	Yakima	

6. Selective gear rules apply to the following waters: Manastash Creek (Kittitas County), including tributaries; Monument Creek (Okanogan County), including tributaries; Nile Creek (Yakima County), including tributaries; Oak Creek (Yakima County), including tributaries.

7. Bear Lake (Spokane County):

Open only to juvenile anglers, licensed adults accompanied by a juvenile, and anglers with a disability who possess a designated harvester companion card.

8. Bonaparte Creek (Okanogan County):

Until further notice, open the Saturday before Memorial Day from the falls upstream, including all tributaries not otherwise provided for. No size restrictions or daily limit for bass, channel catfish, and walleye.

9. Burbank Slough (Walla Walla County):

It is unlawful to fish from any floating device in the area east and north of Highway 12, except for the channel east of Highway 12 up to the fish screen at the Number 3 Pumping Station.

10. Calispell Creek (Calispell River, Pend Oreille County):

Eastern brook trout daily limit is 10. Once an angler has retained 2 trout other than eastern brook trout, the entire trout daily limit has been taken. From Calispell Lake upstream to

source, open the Saturday before Memorial Day until further notice.

11. Calispell Creek tributaries (Pend Oreille County):

Selective gear rules apply. Open the Saturday before Memorial Day until further notice.

12. Chelan River (Chelan County):

It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

13. Cle Elum River (Kittitas County):

It is permissible to fish from a floating device equipped with an internal combustion motor. From above Cle Elum Lake to the outlet of Hyas Lake (including Tucquala Lake), and all tributaries to Cle Elum River above Cle Elum Lake to outlet of Hyas Lake that are not otherwise listed in this section, open the Saturday before Memorial Day until further notice.

14. Columbia River, including impoundments and all connecting sloughs, except Wells Ponds:

(a) From McNary Dam to Hwy 395 Bridge at Pasco:

(i) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(ii) From McNary Dam upstream to the Oregon/Washington border (17 miles): Channel catfish, no limit.

(iii) Upstream from the Oregon/Washington border (which is 17 river miles upstream from McNary Dam): No size restrictions or daily limit for bass, channel catfish, and walleye.

(b) From the Highway 395 Bridge at Pasco to Priest Rapids Dam:

(i) No size restrictions or daily limit for bass, channel catfish, and walleye.

(ii) From June 16 through July 31, release sockeye.

(iii) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(c) From Priest Rapids Dam to Chief Joseph Dam:

(i) Within seasons and areas open to salmon angling, no more than 2 adult hatchery Chinook may be retained. Release all wild salmon.

(ii) No size restrictions or daily limit for bass, channel catfish, and walleye.

(iii) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

15. Colville River (Stevens County):

From the mouth to the bridge at Town of Valley, walleye, no size restriction, and limit of 16 fish. All tributaries to Colville River, from the mouth to the bridge at the town of Valley, open the Saturday before Memorial Day until further notice.

16. Cooper River (Kittitas County), mouth to Cooper Lake:

It is permissible to use an internal combustion motor. Open the Saturday before Memorial Day until further notice.

17. Cougar Lake (Pasayten Wilderness, Okanogan County):

Fishing with two poles is permissible so long as the angler possesses a two-pole endorsement.

18. Cougar Lake (near Winthrop) (Okanogan County):

Open year round. From April 1 until further notice, selective gear rules apply, and it is unlawful to fish from a floating device equipped with an internal combustion motor.

19. Gold Creek, Gold Creek Pond and Outlet Channel, tributary to Keechelus Lake (Kittitas County): Closed, including that portion of Gold Creek that flows through the dry lake bed.

20. Headgate Pond (Asotin County):

Open only to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card.

21. Jolanda, Lake (Chelan County): Closed.

22. Kettle River (Stevens County):

(a) Selective gear rules apply, except for juvenile anglers, from the Canadian border upstream to Highway 21 Bridge at Curlew.

(b) Kettle River mainstem from Barstow Bridge upstream, and tributaries to the Kettle River from the mouth upstream, are open from the Saturday before Memorial Day until further notice.

23. Leader Lake (Okanogan County): Open year round.

24. Little Naches River (Yakima County), including tributaries:

Selective gear rules apply. It is permissible to fish from a floating device equipped with an internal combustion motor.

25. Okanogan River (Okanogan County):

(a) Within the mainstem or tributaries open to game fish angling: No size restrictions or daily limit for bass, channel catfish, and walleye.

(b) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(c) From the mouth to Highway 97 Bridge immediately upstream of the mouth: Fishing two poles is permissible July 1 through October 15, so long as the angler possesses a two-pole endorsement. Salmon limit 6; no more than 2 adult hatchery Chinook may be retained. Release all wild salmon.

(d) From Highway 97 Bridge immediately upstream of the mouth to the highway bridge at Malott: Salmon limit 6, and no more than 2 adult hatchery Chinook may be retained. Release all wild salmon.

(e) Upstream from the highway bridge at Malott:

(i) Open the Saturday before Memorial Day until further notice.

(ii) When open for salmon, salmon limit 6, and no more than 2 adult hatchery Chinook may be retained. Release all wild salmon.

26. Palouse River (Whitman County):

From the mouth to the base of Palouse Falls:

(a) No size restrictions or daily limit for bass, channel catfish, and walleye.

(b) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

27. Rattlesnake Creek (Yakima County):

It is permissible to fish from a floating device equipped with an internal combustion motor. Selective gear rules apply to the tributaries.

28. Roosevelt Lake (Ferry/Lincoln/Stevens counties):

Walleye has no size restriction and a daily limit of 16 fish.

29. Rufus Woods Lake (Douglas County):

(a) Closed waters from Grand Coulee Dam downstream to State Route 155 Bridge.

(b) Tributaries to Rufus Woods Lake open the Saturday before Memorial Day until further notice.

30. San Poil River (Ferry County):

It is permissible to fish for walleye in waters of the lower San Poil River from Boundary Line A upstream to Boundary Line C. Daily limit of 16 walleye, with no size restriction.

31. Scootenev Reservoir (Franklin County):

Walleye limit 8. No more than one walleye over 22 inches in length may be retained.

32. Silver Lake, North (Spokane County):

Open under statewide general rules.

33. Similkameen River (Okanogan County):

(a) Closed from 400 feet below Enloe Dam to 400 feet above Enloe Dam.

(b) From mouth to 400 feet below Enloe Dam: When open for salmon angling, salmon limit 6, and no more than 2 adult hatchery Chinook may be retained. Release all wild salmon.

(c) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(d) From 400 feet above Enloe Dam to the Canadian border, open the Saturday before Memorial Day until further notice.

34. Snake River:

(a) Beginning June 16, an angler may retain 3 hatchery steelhead daily.

(b) No size restrictions or daily limit for bass, channel catfish, and walleye.

(c) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

35. Spokane River (Spokane County):

(a) From SR 25 Bridge upstream to 400 feet below Little Falls Dam: Open year round for walleye, limit 16 fish.

(b) All tributaries not otherwise provided for are open the Saturday before Memorial Day until further notice.

36. Swauk Creek (Kittitas County), including tributaries:

Selective gear rules apply. It is permissible to fish from a floating device equipped with an internal combustion motor.

37. Taneum Creek (Kittitas County), including tributaries:

Selective gear rules apply. It is permissible to fish from a floating device equipped with an internal combustion motor.

38. Teanaway River (Kittitas County), and tributaries:

Selective gear rules apply. It is permissible to fish from a floating device equipped with an internal combustion motor. Trout retention is permissible.

39. Tieton River, North Fork (Yakima County):

Open the Saturday before Memorial Day on the mainstem until further notice. Selective gear rules apply for the mainstem and the tributaries.

40. Touchet River (Columbia/Walla Walla County):

(a) It is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(b) From the mouth to the confluence of the North and South forks, and all tributaries open to gamefish angling within this section: No size restrictions or daily limit for bass, channel catfish, and walleye.

41. Tucannon River (Columbia/Walla Walla County):

(a) For all portions of the Tucannon River and tributaries open to game fish angling, no size restrictions or daily limit for bass, channel catfish, and walleye.

(b) From the mouth to Tucannon Hatchery Bridge, it is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

42. Tucquala Lake (Kittitas County):

Open the Saturday before Memorial Day until further notice. No daily limit on eastern brook trout; eastern brook trout do not count towards the trout daily limit.

43. Walla Walla River (Walla Walla County):

(a) Within the mainstem and tributaries open to game fish angling: No size restrictions or daily limit for bass, channel catfish, and walleye.

(b) From the mouth to the state line, it is unlawful to use other than barbless hooks while fishing for salmon and steelhead.

(b) From the Touchet River upstream to the state line, all tributaries are closed except Mill Creek and the Touchet River as otherwise provided for.

44. Washburn Island Pond (Okanogan County):

An internal combustion motor may be attached to a floating device, but the motor must not be used.

45. Yakima River (Yakima County):

(a) No size restrictions or daily limit for bass, channel catfish, and walleye.

(b) From Sunnyside Dam to 3500 feet below Roza Dam, it is unlawful to fish from a floating device equipped with an internal combustion motor in the portion of the river from the I-82 Bridge at Selah Gap to 3500 feet below Roza Dam.

(c) From 3500 feet below Roza Dam to 400 feet below Roza Dam, it is unlawful to fish from a floating device equipped with an internal combustion motor.

46. Yocum Lake (Pend Oreille County):

It is unlawful to fish from a floating device equipped with an internal combustion motor.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective May 1, 2013:

WAC 232-28-61900C	Exceptions to statewide rules—Lake Roosevelt, San Poil and Spokane rivers.
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**WSR 13-10-048
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-85—Filed April 26, 2013, 1:22 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.045, 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 department is in the process of filing permanent rules that were adopted by the Washington fish and wildlife commission for sportfishing, and permanent rules that will be adopted by the department for recreational salmon fishing. The salmon rules were agreed to with resource comanagers at the North of Falcon proceedings. All of these rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 26, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619 and WAC 220-56-105, effective May 1, 2013, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Puget Sound Region Freshwater: Beaver ponds located within a stream, or adjoining streams that are currently listed as open to trout and other gamefish, follow the same rules and regulations as the stream unless otherwise regulated by special rules.

2. It is permissible to retain hatchery (adipose-clipped) trout less than 14 inches in length, as part of the daily limit, in the following waters:

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Bear Creek	Clallam	
Beaver Creek	Clallam	From mouth to Beaver Falls.
Beaver Creek	Thurston	
Big River	Clallam	Outside Olympic National Park (ONP).

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Black River	Grays Harbor/Thurston	From mouth to bridge on 128th Ave. SW.
Blooms Ditch	Thurston	From mouth to I-5.
Bogachiel River	Clallam	
Calawah River	Clallam	From mouth to forks.
Calawah River, North Fork	Clallam	
Calawah River, South Fork	Clallam	From mouth to ONP boundary.
Cedar Creek	Clallam	Outside ONP.
Cedar Creek	Jefferson	Outside ONP.
Chehalis River	Grays Harbor	Including all channels, sloughs, and interconnected waterways, from mouth (Highway 101 Bridge in Aberdeen) to high bridge on Weyerhaeuser 1000 line.
Chehalis River, South Fork Highway	Lewis	From mouth to County Bridge near Boistfort School.
Clearwater River	Jefferson	
Cloquallum Creek	Grays Harbor	From the mouth to outlet at Stump Lake.
Coal Creek	Clallam	
Connor Creek	Grays Harbor	
Cook Creek	Grays Harbor	From the Quinault Indian Reservation boundary upstream.
Copalis River	Grays Harbor	
Crooked Creek	Clallam	Including tributaries outside ONP.
Dickey River	Clallam	Including both forks.
Elk Creek	Clallam	Outside ONP.
Elk River	Grays Harbor	
Goodman Creek	Jefferson	Outside ONP.
Hoh River, South Fork	Jefferson	Outside ONP.
Hoquiam River, including West Fork	Grays Harbor	
Hoquiam River, East Fork	Grays Harbor	
Humtulpis River	Grays Harbor	
Humtulpis River, East Fork	Grays Harbor	From the mouth to the concrete bridge on Forest Service Road 220.
Humtulpis River, West Fork	Grays Harbor	From mouth to Donkey Creek.
Joe Creek	Grays Harbor	From mouth upstream.
Johns River	Grays Harbor	
Kalaloch Creek	Jefferson	Outside ONP.
Matheny Creek	Jefferson	Outside ONP.
Moclips River	Grays Harbor	From mouth to the Quinault Indian Reservation boundary.
Mosquito Creek	Jefferson	Outside ONP upstream to the Goodman 3000 Mainline Bridge.
Newaukum River	Lewis	From the mouth to Highway 508 Bridge near Kearny Creek.

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>	<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Newaukum River, Middle Fork	Lewis	From the mouth to Tauscher Road Bridge.	Big Beaver Creek	Whatcom	From one-quarter mile upstream of the closed water markers on Ross Lake upstream, including tributary streams and beaver ponds.
Newaukum River, North Fork	Lewis	From the mouth to 400 feet below the Chehalis city water intake.	Cascade River	Skagit	From the Rockport-Cascade Road Bridge upstream.
Palmquist Creek	Clallam	Outside ONP.	Cedar River	Pacific	
Petroleum Creek	Clallam	From the ONP boundary upstream.	Tolt River	King	From mouth to USGS trolley cable near confluence of North and South forks.
Pilchuck Creek	Clallam	Outside ONP.	Clearwater River	Pierce	
Quillayute River	Clallam	Outside ONP.	Monte Cristo Lake	Snohomish	
Quinault River	Grays Harbor	From the mouth at the upper end of Quinault Lake upstream to the ONP boundary.	Naselle River	Pacific/Wahkiakum	Upstream from the mouth of the North Fork.
Quinn Creek	Clallam	Outside ONP.	Naselle River, South Fork	Pacific	From the mouth to Bean Creek.
Salmon Creek	Thurston	Outside ONP and the Quinault Indian Reservation.	Nemah River, Middle Fork	Pacific	From the Department of Natural Resources bridge on the Middle Nemah A-Line Road upstream.
Salmon River	Jefferson	Outside ONP and the Quinault Indian Reservation.	Nemah River, South Fork	Pacific	From the confluence with Middle Fork Nemah River upstream to the second. Highway 101 Bridge crossing
Satsop River	Grays Harbor	From mouth to Bingham Creek Hatchery barrier dam.	North River	Grays Harbor/Pacific	From Fall River to Raimie.
Sol Duc River	Clallam	From the mouth to the concrete pump station at the Sol Duc Hatchery, and from the concrete pump station at Sol Duc Hatchery to Highway 101 Bridge upstream of Klahowya Camp Ground.	Creek Ohop Creek	Pierce	
Middle Fork Satsop River	Grays Harbor	From mouth to Cougar Smith Road.	Palix River	Pacific	From the confluence with the Middle Fork upstream and all forks, including South Fork Palix and Cannon Rivers.
West Fork Satsop River	Grays Harbor	From mouth to Cougar Smith Road.	Salmon Creek	Pacific	
Sitkum River	Clallam	Outside ONP.	Sauk River	Skagit/Snohomish	From Darrington Bridge upstream.
Siwash Creek	Clallam	Outside ONP.	Skykomish River, South Fork	King/Snohomish	From Sunset Falls to the source, including all tributaries and their tributaries.
Snahapish River	Jefferson	Outside of Makah Indian Reservation.	Smith Creek (near North River)	Pacific	From Highway 101 Bridge upstream.
Solberg Creek	Clallam	Outside of Makah Indian Reservation.	Stillaguamish River, South Fork	Snohomish	From Mountain Loop Highway Bridge above Granite Falls upstream to the source.
Solleks River	Jefferson	outside ONP	Tye River	King	From Foss River to Alpine Falls.
Sooes River	Clallam	From the mouth to Highway 101 Bridge.	White (Stuck) River	Pierce	From the Weyerhaeuser 6000 Road Bridge (Bridge Camp) upstream to its source.
South Creek	Clallam	From the mouth to 400 feet below the outlet of Lake Aberdeen Hatchery.	Willapa River	Pacific	From Fork Creek upstream.
Stevens Creek	Grays	From mouth to 200 feet below the weir at the Wishkah Rearing Ponds.	Willapa River, South Fork	Pacific	From the mouth to bridge on Pehl Road.
Thunder Creek	Clallam	From mouth to 400 feet below Wynoochee Dam, including confluence of the reservoir upstream to Wynoochee Falls.			
Trout Creek	Clallam				
Van Winkle Creek	Grays Harbor				
Wishkah River	Grays Harbor				
Wynoochee River	Grays Harbor				

3. It is permissible to fish from a floating device equipped with an internal combustion motor in the following waters:

4. Until further notice, the following waters are open the Saturday before Memorial Day:

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Black Creek	Snohomish	From Bear Creek confluence upstream.

<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>	<u>Water Body</u>	<u>County</u>	<u>Section (if applicable)</u>
Boulder River	Snohomish	From Boulder Falls upstream.	Skookum Creek	Whatcom	From the mouth of Arlecho Creek upstream, including Arlecho Creek and all other tributaries.
Boxley Creek	King	Upstream from the falls located at approximately river mile 0.9.	Skykomish River, North Fork	Snohomish	From Deer Falls upstream, including all tributaries and their tributaries.
Canyon Creek	Whatcom		Snoqualmie River	King	From Snoqualmie Falls upstream, including the North and South Forks and their tributaries (except Tate, Sunday and Phillapa creeks).
Cavanaugh Creek	Whatcom	Including all tributaries, upstream from where Cavanaugh Creek first flows into Whatcom County.	South Prairie Creek	Pierce	From the City of Buckley's diversion dam upstream.
Chaplain Creek	Snohomish	Above the falls to the dam at Chapman Lake, including tributaries and beaver ponds.	Stillaguamish River, North Fork	Snohomish	Upstream of the falls, including all tributaries and their tributaries.
Cherry Creek	Whatcom	From above Cherry Creek Falls including all tributaries and beaver ponds.	Tokul Creek	King	From Tokul Road SE upstream, including all tributaries and beaver ponds.
Coal Creek	King	From Highway I-90 upstream.	Voight Creek	Pierce	From the falls under the powerline upstream.
Cumberland Creek	Whatcom	Upstream from the USFS 17 road bridge, including all tributaries.	Woods Creek	Snohomish	
Dungeness River	Clallam	From Gold Creek upstream.	Youngs Creek	Snohomish	From Potson Rd upstream, including tributaries.
Green (Duwamish) River	King	From Friday Creek upstream, including all tributaries and their tributaries.			
Howard Creek	Whatcom	Upstream from where Howard Creek flows into Section 13 of township 36N, range 6E, and including all tributaries.			
Jefferson Creek	Mason				
Kennedy Creek	Mason	From the falls upstream, including all tributaries.			
Marsh Creek	Snohomish	Above the falls and upstream, including tributaries and beaver ponds.			
Nooksack River, North Fork	Whatcom	Waters above Nooksack Falls, including all tributaries and their tributaries.			
Nooksack River, Middle Fork	Whatcom	Waters above the diversion dam, including all tributaries and their tributaries.			
Olney Creek	Snohomish	Waters upstream of Olney Falls, including tributaries and beaver ponds.			
O'Toole (Marietta) Creek	Whatcom	Upstream from Marietta Falls.			
Plumbago Creek	Whatcom	Upstream from the Sierra Pacific 140 road bridge, including all tributaries.			
Pressentin Creek	Whatcom	Upstream from the waterfall located 0.3 miles from the Skagit River, including all tributaries.			
Quilcene River	Jefferson	From the upper boundary of Falls View Campground upstream.			
Roaring Creek	Whatcom	Upstream from its confluence with Deer Creek, including all tributaries.			

5. There are no size restrictions for Kokanee in the following waters: Aldrich Lake (Mason County); Black Lake (Thurston County); Buck Lake (Kitsap County); Carney Lake (Pierce County).

6. Open year round: Long Lake (Thurston County); Middle Nemah Pond (Pacific County); Mooses Pond (Pacific County); Ohop Lake (Pierce County).

7. Baker Lake (Whatcom County):

Salmon open July 10 until further notice: Daily limit 2 sockeye only; each angler aboard a vessel may deploy salmon angling gear until the daily salmon limit for all licensed and juvenile anglers aboard has been achieved.

8. California Creek (Whatcom County):

The mouth is defined as Drayton Harbor Road Bridge.

9. Canyon Creek (Snohomish County), from mouth to the forks:

Selective gear rules apply.

10. Cascade Creek (San Juan County):

Open from the mouth to Cascade Lake from the first Saturday in June until further notice. Selective gear rules apply. Daily limit 10 eastern brook trout only; release all other fish.

11. Channel Creek (Whatcom County):

Open the first Saturday in June until further notice.

12. Chaplain Lake (Snohomish County): Closed.

13. Clover Creek (Pierce County) upstream of Steila-coom Lake, including all tributaries:

Selective gear rules apply. Trout minimum length 14 inches.

14. Deschutes River (Thurston County):

(a) From old U.S. Highway 99 Bridge near Tumwater to Henderson Boulevard Bridge near Pioneer Park: Open for trout year round, catch and release only.

(b) From Henderson Boulevard Bridge upstream, it is permissible to fish from a floating device equipped with an internal combustion motor.

15. Ebey Lake (Little Lake, Snohomish County):

Open under statewide general rules.

16. Fork Creek (Pacific County):

From Forks Creek Hatchery Rack upstream 500 feet to fishing boundary sign, open to anglers with disabilities who permanently use a wheelchair and possess a designated harvester companion card.

17. Hoh River (Jefferson County):

(a) From Olympic National Park boundary upstream to DNR Oxbow Campground Boat Launch: From the first Saturday in June until further notice, trout minimum length 14 inches, except it is permissible to retain hatchery (adipose clipped) trout less than 14 inches in length, as part of the limit.

(b) From DNR Oxbow Campground Boat Launch to Willoughby Creek: Selective gear rules apply May 16 until further notice.

18. Hutchinson Creek (Whatcom County): Closed.

19. Minter Creek (Pierce/Kitsap counties), from the mouth to the hatchery rack:

Open for trout only the first Saturday in June until further notice. Selective gear rules apply. Minimum length 14 inches.

20. Nisqually River (Pierce County):

(a) From the mouth to Military Tank Crossing Bridge:

(i) All species: Fishing from any floating device prohibited July 28 through July 30.

(ii) Salmon: Daily limit 6; no more than 2 adults may be retained plus 2 additional adult pink salmon.

(b) From Military Tank Crossing Bridge to 400 feet below LaGrande Powerhouse, it is permissible to fish from a floating device equipped with an internal combustion motor.

(c) From Alder Reservoir upstream including all tributaries, open the Saturday before Memorial Day until further notice. Selective gear rules apply.

21. Nooksack River, South Fork (Skagit/Whatcom counties):

Upstream from and including Wanlick Creek, and including all tributaries: open the Saturday before Memorial Day until further notice; fly fishing only; catch and release only.

22. Pilchuck Creek (Snohomish County):

(a) From the mouth to Highway 9 Bridge, it is permissible to fish from a floating device equipped with an internal combustion motor.

(b) From Pilchuck Falls upstream, including all tributaries and their tributaries, and all tributaries to Lake Cavanaugh, open the Saturday before Memorial Day until further notice.

23. Pratt River (King County):

Open the Saturday before Memorial Day until further notice. It is permissible to fish from a floating device equipped with an internal combustion motor.

24. Puyallup River (Pierce County), from the mouth (11th St. Bridge) to the mouth of the White River: Closed.

25. Ross Lake (Whatcom County):

(a) Tributaries to the tributaries, except Big Beaver Creek and Ruby Creek, are open July 1 until further notice, from one mile above their mouths to the headwaters.

(b) Tributaries to Ruby Creek open July 1 until further notice.

26. Shady Lake (King County):

Open the fourth Saturday in April until further notice.

27. Skagit River (Skagit/Whatcom counties):

(a) From mouth to Hwy 536 at Mt. Vernon:

(i) Open through May 31 for trout only: Selective gear rules apply; hooks must measure 1/2" or less from point to shank; release all fish other than trout.

(ii) July 1 through July 31, hooks must measure 1/2" or less from point to shank.

(b) From Hwy 536 at Mt. Vernon to mouth of Gilligan Creek: July 1 through July 31, hooks must measure 1/2" or less from point to shank. Salmon closed June 16 through July 15.

(c) From mouth of Gilligan Creek to the Dalles Bridge at Concrete: June 1 until further notice, hooks must measure 1/2" or less from point to shank.

(d) From the Dalles Bridge at Concrete to Hwy 530 bridge at Rockport: June 1 until further notice, hooks must measure 1/2" or less from point to shank.

(e) From Hwy 530 bridge at Rockport to Cascade River Road: July 16 until further notice, hooks must measure 1/2" or less from point to shank.

28. Skokomish River (Mason County), from the mouth to Bonneville power lines (upstream of Hwy 101 at approximately 47°18.88'N, 123°11.26'W): Closed.

29. Skookumchuck River (Thurston County):

(a) From the mouth to 100 feet below the outlet of the PP&L/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam: From the first Saturday in June until further notice, trout minimum length 14 inches, except it is permissible to retain hatchery (adipose-clipped) trout less than 14 inches in length, as part of the daily limit.

(b) From Skookumchuck Reservoir upstream, it is permissible to fish from a floating device equipped with an internal combustion motor.

30. Skykomish River (Snohomish County), from the mouth to Wallace River:

Salmon: Open June 1 through July 31; minimum length 12 inches; daily limit 4 hatchery Chinook only, of which no more than 2 may be adult Chinook.

31. Tahuya River (Mason County):

The mouth is defined as North Shore Road Bridge.

32. Taylor River (King County):

Open the Saturday before Memorial Day until further notice. It is permissible to fish from a floating device equipped with an internal combustion motor.

33. Tolt River (King County):

It is permissible to fish from a floating device equipped with an internal combustion motor. Open the Saturday before Memorial Day until further notice, from the falls upstream on the North Fork including all tributaries, and from the dam upstream on the South Fork.

34. Tolt River, North Fork (King County), from falls upstream, and all tributaries:

Open the Saturday before Memorial Day until further notice. It is permissible to fish from a floating device equipped with an internal combustion motor.

35. Tolt River, South Fork (King County), from dam upstream:

Open the Saturday before Memorial Day until further notice. It is permissible to fish from a floating device equipped with an internal combustion motor.

36. Umbrella Creek (Clallam County), outside Olympic National Park, including tributaries and Elk Lake:

It is permissible to retain hatchery (adipose-clipped) trout less than 14 inches in length, as part of the daily limit. Release all Kokanee.

37. Vance Creek/Elma Ponds (Grays Harbor County):

Pond One (Bowers Lake) is open only to juvenile anglers, seniors, and anglers with a disability who possess a designated harvester companion card.

38. Wallace River (Snohomish County):

(a) From the mouth to 363rd Ave SE/Reece Rd, night closure and anti-snagging rule in effect June 1 until further notice.

(b) From Wallace Falls upstream, including all tributaries and their tributaries, open the Saturday before Memorial Day until further notice.

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

**WSR 13-10-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-87—Filed April 26, 2013, 2:30 p.m., effective April 26, 2013, 2:30 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

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

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: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair-start provisions. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: April 26, 2013.

Philip Anderson
Director

NEW SECTION

WAC 220-52-04600P Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from Klipsan Beach (46°28.00) to the WA/OR border (46°15.00) and Willapa Bay: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Klipsan Beach and the U.S./Canada Border, including Grays Harbor: Open.

(4) The Quinalt primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

Northeast Corner (Raft River):	47°28.00 N. Lat.	124°20.70 W. Lon.
Northwest Corner:	47°28.00 N. Lat.	124°34.00 W. Lon.
Southwest Corner:	47°08.00 N. Lat.	124°25.50 W. Lon.
Southeast Corner (Copalis River):	47°08.00 N. Lat.	124°11.20 W. Lon.

(5) The Quileute Special Management Area (SMA) will open to fishing for Dungeness crab at 8:00 a.m. on May 1, 2013. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

• Northeast Corner (Cape Johnson):	47°58.00' N. Lat.	124°40.40' W. Lon.
• Northwest Corner:	47°58.00' N. Lat.	124°49.00' W. Lon.
• Southwest Corner:	47°40.50' N. Lat.	124°40.00' W. Lon.
• Southeast Corner (Destruction Island):	47°40.50' N. Lat.	124°24.43' W. Lon.

(6) It is unlawful for a vessel to use more than 100 pots in the Quileute SMA from 8:00 a.m. May 1, 2013, until 8:00 a.m. May 31, 2013. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(7) All other provisions of the permanent rule remain in effect.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600N Coastal crab seasons (13-73)

WSR 13-10-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-83—Filed April 26, 2013, 2:48 a.m., effective April 26, 2013, 2:48 a.m.]

Effective Date of Rule: Immediately.

Purpose: To allow the public to kill gray wolves in the act of attacking their domestic animals in areas of the state where wolves are not listed under the federal Endangered Species Act and where wolf population levels are stable and not likely to be impacted by lethal removal actions.

Citation of Existing Rules Affected by this Order: Amending WAC 232-36-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.240, and 77.36.120.

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 gray wolf population is expanding quickly in the state and there have been recent and escalating reports of wolf attacks on pets and livestock. The lambing and calving season has arrived and additional attacks are anticipated as livestock move onto open range. In addition, the number of people, pets and other domestic animals (pack animals) spending time outdoors will increase as the weather improves, raising the potential for encounters and attacks by wolves. Current regulations are limited to owners of commercial livestock and require them to obtain a permit from the department which is often not feasible in responding to an attack from a wolf. The department plans to initiate standard rule making immediately.

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

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

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

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

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

Date Adopted: April 26, 2013.

Philip Anderson
Director

NEW SECTION

WAC 232-36-05100B Killing wildlife causing private property damage Notwithstanding the provisions of WAC 232-36-051:

(1) An owner of domestic animals, including livestock, the owner's immediate family member, the agent of an owner, or the owner's documented employee may kill one gray wolf (*Canis lupus*) without a permit issued by the director, regardless of its state classification, if the wolf is attacking their domestic animals.

(a) This section applies to the area of the state where the gray wolf is not listed as endangered or threatened under the federal endangered species act.

(b) Any wolf killed under this authority must be reported to the department within twenty-four hours.

(c) The wolf carcass must be surrendered to the department.

(d) The owner of the domestic animal must grant or assist the department in gaining access to the property where the wolf was killed for the purposes of data collection or incident investigation.

(2) If the department finds that a private citizen killed a gray wolf that was not attacking a domestic animal, or that the killing was not consistent with this rule, then that person may be prosecuted for unlawful taking of endangered wildlife under RCW 77.15.120.

(3) In addition to the provisions of (1), the director may authorize additional removals under RCW 77.12.240.

WSR 13-10-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 13-88—Filed April 29, 2013, 4:58 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-03000M; and amending WAC 220-52-030.

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: Based on historical catches and on-site inspection, there should be adequate clams to support an eight-week season. Biotoxin levels currently fall below the regulatory threshold. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 29, 2013.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-52-03000M Commercial razor clams. Notwithstanding the provisions of WAC 220-52-030, effective 12:01 a.m. May 1, 2013, through 11:59 p.m. June 28, 2013, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point, defined by a line of boundary markers consisting of four fluorescent orange posts with the eastern-most post located at N 46° 39.655, W 124° 03.340; and the western-most post located at N 46° 39.425, W 124° 03.954.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 29, 2013:

WAC 220-52-03000M Commercial razor clams.

WSR 13-10-063

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed April 30, 2013, 8:15 a.m., effective April 30, 2013, 8:15 a.m.]

Effective Date of Rule: Immediately.

Purpose: The terms of the settlement agreement between *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-00742-RAJ, require the health care authority (HCA) to provide a coverage benefit under medicaid's early periodic screening, diagnosis, and treatment (EPSDT) requirement on January 2, 2013, to assist children with autism spectrum disorders and their families to improve the symptoms associated with autism spectrum disorders. This emergency rule provides minimum standards for agencies to obtain and maintain licensure from the department of social and health services (DSHS) so that licensed agencies may contract with HCA to deliver applied behavior analysis (ABA) services to eligible individuals. This emergency rule replaces and supersedes WSR 13-02-083, filed on December 31, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0400, 388-865-0405, 388-865-0420, 388-865-0425, and 388-865-0460.

Statutory Authority for Adoption: RCW 34.05.350, 43.20A.550, 71.24.035, 74.04.050.

Other Authority: *Washington Autism Alliance and Advocacy, et al. v. Douglas Porter*, U.S. District Court, Western District of Washington, Case No. 2:12-cv-00742-RAJ, settlement agreement.

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: A second emergency rule adoption is required in order to continue the first emergency rule filed to timely comply with the settlement agreement between *Washington Autism and Advocacy, et al. v. Douglas Porter*. This settlement agreement requires HCA to provide a coverage benefit by January 2, 2013, to assist children with autism spectrum disorders. DSHS must establish minimum licensing standards in rule in order for community mental health agencies to deliver ABA services. The first emergency rule was filed under WSR 13-02-083 on December 31, 2012. A CR-102 has been filed under WSR 13-07-068 and a public hearing for the permanent rule was held April 23, 2013.

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

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

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

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

Date Adopted: April 23, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-17-156, filed 8/22/05, effective 9/22/05)

WAC 388-865-0400 Community support service providers. The ~~((mental health division))~~ department licenses and certifies community support service providers. To gain and maintain licensure or certification, a provider must meet applicable local, state and federal statutes and regulations as well as the requirements of WAC ~~((388-865-400 [388-865-0400]))~~ 388-865-0400 through ~~((388-865-450 [388-865-0450]))~~ 388-865-0450 as applicable to services offered. The license or certificate lists service components the provider is authorized to provide to publicly funded consumers and must be prominently posted in the provider reception area. In addition, the ~~((provider))~~ agency must meet minimum standards of the specific service components for which licensure is being sought:

- (1) Emergency crisis intervention services;
- (2) Case management services;
- (3) Psychiatric treatment, including medication supervision;
- (4) Behavioral, counseling, and psychotherapy services;
- (5) Day treatment services;
- (6) Consumer employment services; ~~((and/or))~~
- (7) Peer support services; and/or
- (8) Applied behavior analysis (ABA) services.

AMENDATORY SECTION (Amending WSR 09-19-012, filed 9/3/09, effective 10/4/09)

WAC 388-865-0405 Competency requirements for staff. ~~((The licensed service provider))~~ An agency must ensure that staff members, including contracted staff members, are qualified for the position they hold and have the education, experience, or skills to perform the job requirements. The ~~((provider))~~ agency must maintain documentation that:

- (1) All staff members, including contracted staff members, have a current Washington state department of health license or certificate or registration as may be required for their position;
- (2) Washington state patrol background checks are conducted for employees in contact with consumers consistent with RCW 43.43.830;
- (3) Employed or contracted professional staff members required to serve children with autism spectrum disorders

meet the professional staff requirements in WAC 388-865-0469(5):

~~((4))~~ (5) Mental health services are provided by a mental health professional, or under the clinical supervision of a mental health professional;

~~((4))~~ (5) Staff performing mental health services (not including crisis telephone) must have access to consultation with a psychiatrist or a physician with at least one year's experience in the direct treatment of persons who have a mental or emotional disorder;

~~((5))~~ (6) Mental health services to children, older adults, ethnic minorities or persons with disabilities must be provided by, under the supervision of, or with consultation from the appropriate mental health specialist(s) when the consumer:

- (a) Is a child as defined in WAC 388-865-0150;
 - (b) Is or becomes an older person as defined in WAC 388-865-0150;
 - (c) Is a member of a racial/ethnic group as defined in WAC 388-865-0105 and as reported:
 - (i) In the consumer's demographic data; or
 - (ii) By the consumer or others who provide active support to the consumer; or
 - (iii) Through other means.
 - (d) Is disabled as defined in WAC 388-865-0150 and as reported:
 - (i) In the consumer's demographic data; or
 - (ii) By the consumer or others who provide active support to the consumer; or
 - (iii) Through other means.
- ~~((6))~~ (7) Staff receive regular supervision and an annual performance evaluation; and
- ~~((7))~~ (8) An individualized annual training plan must be implemented for each direct service staff person and supervisor, to include at a minimum:
- (a) The skills he or she needs for his/her job description and the population served; and
 - (b) The requirements of RCW 71.05.720.

AMENDATORY SECTION (Amending WSR 10-09-061, filed 4/19/10, effective 5/20/10)

WAC 388-865-0420 Intake evaluation. (1) All individuals receiving community mental health outpatient services, with the exception of crisis, stabilization, and rehabilitation case management services, must have an intake evaluation. The purpose of an intake evaluation is to gather information to determine if a mental illness exists which is a covered diagnosis under Washington state's section 1915(b) capitated waiver program, and if there are medically necessary state plan services to address the individual's needs. (For a listing of the covered diagnoses and state plan services go to: http://www.dshs.wa.gov/pdf/hrsa/mh/Waiver_2008_2010_PHIP_NEW_%200408_with_final_revisions.pdf)

- (2) The intake evaluation must:
 - (a) Be provided by a mental health professional.
 - (b) Be initiated within ten working days from the date on which the individual or their parent or other legal representative requests services and completed within thirty working days of the initiation of the intake.

(c) Be culturally and age relevant.

(d) Document sufficient information to demonstrate ~~((medical necessity as defined in the state plan, and must))~~ and/or include:

(i) Medical necessity, as defined in WAC 388-865-0150;

(ii) Presenting problem(s) as described by the individual, including a review of any documentation of a mental health condition provided by the individual. It must be inclusive of people who provide active support to the individual, if the individual so requests, or if the individual is under thirteen years of age;

~~((iii))~~ (iii) Current physical health status, including any medications the individual is taking;

~~((iv))~~ (iv) Current substance use and abuse and treatment status (GAIN-SS);

~~((v))~~ (v) Sufficient clinical information to justify the provisional diagnosis using diagnostic and statistical manual (DSM IV TR) criteria, or its successor;

~~((vi))~~ (vi) An identification of risk of harm to self and others, including suicide/homicide. Note: A referral for provision of emergency/crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;

~~((vii))~~ (vii) Whether they are under the supervision of the department of corrections; and

~~((viii))~~ (viii) A recommendation of a course of treatment.

AMENDATORY SECTION (Amending WSR 10-09-061, filed 4/19/10, effective 5/20/10)

WAC 388-865-0425 Individual service plans. ~~((The))~~

(1) A community mental health agency must:

(a) Develop a consumer-driven, strength-based individual service plan that meets the individual's unique mental health needs.

(b) Ensure an individualized applied behavior analysis (ABA) treatment plan for a child receiving ABA services meets the requirements in subsection (3) of this section and WAC 388-865-0469.

(2) An ~~((The))~~ individual service plan must:

(a) Be developed in collaboration with the individual, or the individual's parent or other legal representative if applicable. ~~((The service plan must:))~~

~~((b))~~ (b) Be initiated with at least one goal identified by the individual, or their parent or other legal representative if applicable, at the intake evaluation or the first session following the intake evaluation.

~~((c))~~ (c) Be developed within thirty days from the first session following the intake evaluation.

~~((d))~~ (d) Address age, cultural, or disability issues identified by the individual, or their parent or other legal representative if applicable, as relevant to treatment.

~~((e))~~ (e) Include treatment goals or objectives that are measurable and that allow the provider and individual to evaluate progress toward the individual's identified recovery goals.

~~((f))~~ (f) Be in language and terminology that is understandable to individuals and their family.

~~((g))~~ (g) Identify medically necessary service modalities, mutually agreed upon by the individual and provider, for this treatment episode.

~~((h))~~ (h) Demonstrate the individual's participation in the development of the individual service plan. Participation may be demonstrated by the individual's signature and/or quotes documented in the plan. Participation must include family or significant others as requested by the individual. If the provider developing the plan is not a mental health professional, the plan must also document approval by a mental health professional.

~~((i))~~ (i) Include documentation that the individual service plan was reviewed at least every one hundred eighty days. It should also be updated to reflect any changes in the individual's treatment needs or as requested by the individual, or their parent or other legal representative if applicable.

~~((j))~~ (j) With the individual's consent, or their parent or other legal representative if applicable, coordinate with any systems or organizations the individual identifies as being relevant to the individual's treatment. This includes coordination with any individualized family service plan (IFSP) when serving children ~~((under))~~ younger than age three ~~((years of age)).~~

~~((k))~~ (3) Beginning January 2, 2013, the health care authority will administer rules in Title 182 WAC for ABA services, including specific rules for an individualized ABA treatment plan. The individualized ABA treatment plan must, at a minimum:

(a) Be developed by a lead behavior analysis therapist (LBAT) who meets the LBAT requirements in WAC 388-865-0469(5);

(b) Identify the services to be delivered by a therapy assistant who meets the therapy assistant requirements in WAC 388-865-0469(5); and

(c) Meet the specific requirements of the health care authority in Title 182 WAC.

(4) If an individual disagrees with specific treatment recommendations or is denied a requested treatment service, they may pursue their rights under WAC 388-865-0255.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0460 Behavioral, counseling, and psychotherapy services—Additional standards. The licensed community support service provider for behavioral, counseling, and psychotherapy services must assure that all general minimum standards for community support are met.

NEW SECTION

WAC 388-865-0469 Applied behavior analysis (ABA) services. (1) Applied behavior analysis (ABA) services are intended to assist children with autism spectrum disorders and their families to improve the symptoms associated with autism spectrum disorders. This section contains the licensure, certification, and staffing requirements for agencies providing ABA services.

(2) Beginning January 2, 2013:

(a) An agency currently licensed by the department that meets the minimum standards in this section may deliver ABA services to eligible individuals.

(b) The health care authority (HCA):

(i) Administers rules in WAC 182-531-1410 for ABA services requirements, including:

(i) Program and clinical eligibility requirements;

(ii) Prior authorization requirements;

(iii) Specific ABA provider requirements;

(iv) Coverage requirements;

(v) Billing requirements; and

(vi) Requirements for:

(A) Referrals to Centers of Excellence (COE) for evaluations and orders to be performed by healthcare professionals licensed under chapters 18.71, 18.71A, 18.79, and 18.83;

(B) ABA assessments and ABA treatment plan development; and

(C) Delivery of ABA services.

(3) **Licensure requirements.**

(a) An agency not licensed by the department under this chapter must seek and obtain licensure from the department in order to provide ABA services. These requirements do not apply to COE defined in WAC 182-531-1410. The agency must:

(i) Submit an application to the department (see WAC 388-865-0470).

(ii) Pay the licensing application fee (see WAC 388-865-0103).

(iii) Meet the applicable agency requirements in WAC 388-865-0400.

(iv) Qualify for a provisional and full license as described in WAC 388-865-0472 (1) and (2).

(v) Comply with the applicable rules regarding licensure in WAC 388-865-0472 through 388-865-0482.

(vi) Meet the additional requirements in this section.

(b) An agency must have written policies and procedures to support and implement the requirements in this section.

(4) **Certification requirements.** An agency must be a department-licensed community mental health agency that is certified by the department to provide ABA services.

(5) **Staff requirements.** An agency must meet the applicable competency and documentation requirements in WAC 388-865-0405 for ensuring staff members are qualified for the positions they hold. Contracted staff must meet the same requirements as the agency's noncontracted staff.

(a) **Lead behavior analysis therapist (LBAT).** An agency must employ or contract with an LBAT. To qualify as an LBAT, an individual must meet the professional requirements in (i) through (iii) of this subsection:

(i) The individual must be one of the following:

(A) A psychiatrist or a psychiatric advanced registered nurse practitioner (ARNP) as defined in chapter 71.05 RCW, or a psychologist, a mental health counselor (LMHC), a marriage and family therapist (LMFT), or a social worker (LCSW) licensed by department of health; or

(B) A noncontracted agency-affiliated counselor under RCW 18.19.210 who, in addition, meets the requirements of a mental health professional as defined in WAC 388-865-0150;

(ii) The individual must meet one of the following:

(A) Hold national certification as a board certified behavior analyst (BCBA); or

(B) Have two hundred forty hours of coursework related to behavior analysis and seven hundred fifty hours of supervised experience, or two years of practical experience in designing and implementing comprehensive ABA treatment plans.

(iii) The individual must have expertise in applying ABA principles to the treatment of autism spectrum disorders.

(b) **Therapy assistant.** An agency may choose to employ a therapy assistant. To qualify as a therapy assistant, an individual must meet the minimum professional requirements in (i) and (ii) of this section:

(i) The individual must be one of the following:

(A) Licensed by DOH as a health care professional; or

(B) A noncontracted individual credentialed as an agency affiliated counselor under chapter 18.19 RCW.

(ii) The individual must:

(A) Have sixty hours of training in ABA principles, techniques, and providing services to children with autism spectrum disorders; and

(B) Before providing services to individuals, be approved by the agency's supervising LBAT as having demonstrated competency in delivering ABA services.

(c) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:

(i) Supervises the therapy assistant in accordance with agency policies and procedures;

(ii) Completes a review of an individual's ABA treatment plan with the therapy assistant before services are provided;

(iii) Assures the therapy assistant delivers services according to the individual's ABA treatment plan; and

(iv) Meets twice each month with the therapy assistant and documents review and approval of the individual's progress with the ABA treatment plan.

(6) **Maintaining licensure.** To maintain department licensure to provide ABA services, an agency must:

(a) Continue to employ or contract with staff to meet the requirements in subsection (5) of this section. Contracted staff must meet the same requirements as the agency's noncontracted staff.

(b) Meet the following, as applicable to ABA services:

(i) Competency requirements for staff in WAC 388-865-0405, except that subsections (5) and (6) do not apply to ABA services.

(ii) Consumer rights requirements in WAC 388-865-0410, except that subsections (3)(m) and (3)(n) do not apply to ABA services.

(iii) Access to services requirements in WAC 388-865-0415.

(iv) Intake evaluation requirements in WAC 388-865-0420, except that subsections (1), (2)(d)(i), (2)(d)(iv), (2)(d)(v), and (2)(d)(vii) do not apply to ABA services.

(v) Individual service plan requirements in WAC 388-865-0425, except that subsections (1)(a), (2)(d), (2)(g), and (4) do not apply to ABA services.

(vi) Clinical records requirements in WAC 388-865-0430, except that subsections (7), (10), (11) and (12) do not apply to ABA services.

(vii) Clinical record access procedures and requirements in WAC 388-865-0435 and 388-865-0436.

(viii) Quality management process requirements in WAC 388-865-0450.

(ix) Provider requirements in WAC 388-865-0470, 388-865-0472, 388-865-0478, 388-865-0480, and 388-865-0482, if applicable to the ABA services provided.

(c) Meet one or more of the following:

(i) Case management services requirements in WAC 388-865-0456, except that:

(A) Subsection (6) does not apply to ABA services; and

(B) Subsection (7) does not apply to ABA services, except that the agency must maintain written procedures for home visits to be in compliance with RCW 71.05.710.

(ii) Psychiatric treatment, including the medication supervision—additional standards requirements in WAC 388-865-0458, if applicable to the ABA services provided.

(iii) Behavioral, counseling, and psychotherapy services—additional standards requirements in WAC 388-865-0460, if applicable to the ABA services provided.

(iv) Day treatment services—additional standards requirements in WAC 388-865-0462, if applicable to the ABA services provided.

Reasons for this Finding: Client's access to services ordered, prescribed or referred by providers who would qualify as nonbilling would be adversely affected and consequently their health status may be compromised, as these services include diagnostics, admissions and medication. If the service ordered were a mental health medication public safety could be compromised.

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

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

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

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

Date Adopted: April 30, 2013.

Kevin M. Sullivan
Rules Coordinator

WSR 13-10-073
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed April 30, 2013, 2:22 p.m., effective May 1, 2013]

Effective Date of Rule: May 1, 2013.

Purpose: These rules establish the medicaid agency's authority to designate willing providers as nonbilling providers and establish the rules applicable to those providers who may apply for this new designation. Nonbilling providers are health care professionals who wish to enroll with the agency to only be an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency. This is required for medicaid to be compliant with the Affordable Care Act, while retaining access to clients for providers who qualify for this designation.

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0075, 182-500-0080, 182-500-0085, 182-502-0005, and 182-530-1000.

Statutory Authority for Adoption: RCW 41.05.021.

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.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0075 Medical assistance definitions—N. "National correct coding initiative (NCCI)" is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The Centers for Medicare and Medicaid Services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

"National provider indicator (NPI)" is a federal system for uniquely identifying all providers of health care services, supplies, and equipment.

"NCCI edit" is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency or the agency's designee's fee schedules, billing instructions, and other publications. The agency or the agency's designee has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or agency or agency's designee policy.

"Nonapplying spouse" see "spouse" in WAC ((~~388-500-0100~~)) 182-500-0100.

"Nonbilling provider" is a health care professional who wishes to enroll with the agency to only be an ordering, referring, prescribing provider for the Washington medicaid

program and who is not otherwise enrolled as a medicaid provider with the agency.

"**Noncovered service**" see "covered service" in WAC ((388-500-0020)) 182-500-0020.

"**Nursing facility**" see "institution" in WAC ((388-500-0050)) 182-500-0050.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0080 Medical assistance definitions—

O. "Ordering and referring provider" means physician or other professional that orders or refers items or services for clients eligible for Washington's health care programs administered by the agency.

"**Outpatient**" means a patient receiving care in a hospital outpatient setting or a hospital emergency department, or away from a hospital such as in a physician's office or clinic, the patient's own home, or a nursing facility.

"**Overhead costs**" means those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Overhead costs that are allocated must be clearly distinguished from other functions and identified as a benefit to a direct service.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0085 Medical assistance definitions—

P. "Patient transportation" means client transportation to and/or from covered health care services under federal and state health care programs.

"**Physician**" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"**Prescribing provider**" means physician or other professional authorized by law or rule to prescribe drugs for clients eligible for Washington's health care programs administered by the agency.

"**Prior authorization**" is the requirement that a provider must request, on behalf of a client and when required by rule, the agency's or the agency's designee's approval to render a health care service or write a prescription in advance of the client receiving the health care service or prescribed drug, device, or drug-related supply. The agency's or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

"**Prosthetic devices**" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

"**Provider**" means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the agency or the agency's designee, and is authorized to provide health care, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide health care, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

"**Public institution**" see "institution" in WAC ((388-500-0050)) 182-500-0050.

AMENDATORY SECTION (Amending WSR 12-12-032, filed 5/29/12, effective 7/1/12)

WAC 182-502-0005 Core provider agreement

(CPA). (1) The agency only pays claims submitted by or on behalf of a health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency ((~~or~~)), is a performing provider on an approved CPA with the agency, or has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the CPA application, except as provided in subsection (6) of this section.

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

- (iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;
 - (iv) Retroactive client eligibility; or
 - (v) Other critical agency need as determined by the agency's chief medical officer or designee.
- (c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.
- (d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

NEW SECTION

WAC 182-502-0006 Enrollment for nonbilling individual providers. (1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

- (a) Core provider agreement, in accordance with WAC 182-502-0005; or
 - (b) Nonbilling provider agreement, in accordance with subsection (4) of this section.
- (2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.
- (3) Nothing in this chapter obligates the agency to enroll any health care professional, who requests enrollment as a nonbilling provider.
- (4) **Enrollment.**
- (a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:
 - (i) Not already be enrolled with the medicaid agency as a billing or servicing provider;
 - (ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;
 - (iii) Be enrolled with medicare, when required in specific program rules;
 - (iv) Have current professional liability coverage, individually or as a member of a group;
 - (v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;
 - (vi) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;
 - (vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;
 - (viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each

provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

- (i) The agency determines that:
 - (A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or
 - (B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).
 - (ii) The health care professional:
 - (A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;
 - (B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;
 - (C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;
 - (D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;
 - (E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;
 - (F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;
 - (G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;
 - (H) Does not have sufficient liability insurance according to (a)(i) of this subsection for the scope of practice; or
 - (I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.
- (5) **Effective date of enrollment of nonbilling provider.** Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application.
- (a) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:
 - (i) Earlier than the effective date of any required license or certification; or
 - (ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application.
 - (b) The chief medical officer or designee may approve exceptions as follows:
 - (i) Emergency services;

- (ii) Agency-approved out-of-state services;
- (iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;
- (iv) Retroactive client eligibility; or
- (v) Other critical agency need as determined by the agency's chief medical officer or designee.

(6) **Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent within the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Non-billing Individual Providers form (HCA 13-002) including, but not limited to, changes in:

- (i) Address or telephone number;
- (ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

- (i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4)(a)(vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

(7) **Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

(8) **Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the nonbilling provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S. Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

(9) **Terminations.**

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with thirty calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

(10) **Termination disputes.**

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.

AMENDATORY SECTION (Amending WSR 13-04-095, filed 2/6/13, effective 3/9/13)

WAC 182-530-1000 Outpatient drug program—

General. (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The agency reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 182-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 182-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 182-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 182-530-2000 (1)(g);

(c) Prescribed by:

(i) A provider with an approved core provider agreement; ~~((e))~~

(ii) A provider who is enrolled as a performing provider on an approved core provider agreement; or

(iii) A provider who is enrolled as a nonbilling provider.

(d) Within the scope of an eligible client's medical assistance program;

(e) Medically necessary as defined in WAC 182-500-0070 and determined according to the process found in WAC 182-501-0165;

(f) Authorized, as required within this chapter;

(g) Billed according to WAC 182-502-0150 and 182-502-0160; and

(h) Billed according to the requirements of this chapter.

(3) Coverage determinations for the agency are made by the agency's pharmacists or medical consultants in accordance with applicable federal law. The agency's determination may include consultation with the drug use review (DUR) board.

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: One of the provisions of the Washington fish and wildlife commission's new draft policy, "Columbia River Basin Salmon Management," requires sport anglers fishing for salmon and steelhead in the mainstem Columbia River to use barbless hooks beginning in 2013. This regulation is needed to maintain concurrent regulations between Oregon and Washington in those waters of the mainstem Columbia River where the two states share a boundary. In addition, this regulation is needed to implement the barbless-hook requirement for Columbia River tributaries that was adopted during the recent North of Falcon process. These rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 30, 2013.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900H Freshwater exceptions to statewide rules—Columbia River and tributaries. Notwithstanding the provisions of WAC 232-28-619 and WAC 220-56-123, it is unlawful to use other than barbless hooks while fishing for salmon and steelhead in the following waters during the dates and areas listed below:

(1) Effective immediately until further notice:

Columbia River North Jetty.

Columbia River from Buoy 10 upstream to the Oregon/Washington border above McNary Dam.

a) From a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank to the I-5 Bridge, barbless hooks are also required while fishing for cutthroat trout.

(2) Effective May 1 until further notice:

Cispus River (Lewis County) from mouth (posted markers at the Lewis County PUD kayak launch) upstream to North Fork.

Cowlitz River (Cowlitz/Lewis County) from boundary markers at mouth to 400' below powerhouse at Mayfield Dam.

WSR 13-10-076

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 13-86—Filed April 30, 2013, 4:00 p.m., effective April 30, 2013, 4:00 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900R; 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

b) From the first Saturday in June until further notice, barbless hooks are also required while fishing for trout.

Cowlitz River (Cowlitz/Lewis County) from posted sign on Peters Road to mouth of Ohanepecosh and Muddy Fork.

Drano Lake (Skamania County).

Lewis River (Clark/Cowlitz County) from mouth to mouth of East Fork.

Lewis River, North Fork (Clark/Cowlitz County) from mouth of East Fork to Johnson Creek.

Kalama River from boundary markers at the mouth to 1,000' below the fishway at upper salmon hatchery.

Klickitat River (Klickitat County) from mouth to Fisher Hill Bridge.

Scanewa Lake (Cowlitz Falls Reservoir) (Lewis County).

White Salmon River (Klickitat/Skamania County) from mouth to county road bridge below the powerhouse.

Wind River (Skamania County) from mouth (boundary/line markers) to 400' below Shipherd Falls.

(3) Effective June 1 until further notice:

Blue Creek (Lewis County) from mouth to posted sign above rearing pond outlet.

Klickitat River (Klickitat County) from 400' upstream from #5 fishway to Yakama Reservation boundary.

Lewis River, North Fork (Clark/Cowlitz County) from Johnson Creek to overhead powerlines below Merwin Dam

Skamokawa Creek (Wahkiakum County) from mouth (Hwy. 4 Bridge) to forks below Oatfield and Middle Valley Road.

(4) Effective the first Saturday in June until further notice:

Abernathy Creek (Cowlitz County) from mouth (Hwy. 4 Bridge) to posted markers 500' below salmon hatchery.

Cedar Creek (tributary of North Fork Lewis River) (Clark County).

Coal Creek (Cowlitz County) from mouth to 400' below falls.

Cowlitz River (Cowlitz/Lewis County) Clear Fork and Muddy Fork.

Coweeman River (Cowlitz County).

Elochoman River (Wahkiakum County) from mouth to West Fork.

Germany Creek (Cowlitz County) from mouth to end of Germany Creek Road (approximately 5 miles).

Grays River (Wahkiakum County) from mouth to South Fork.

Grays River, West Fork (Wahkiakum County) from mouth to hatchery intake/footbridge.

Green River (Cowlitz County) from mouth to Miner's Creek.

Hamilton Creek (Skamania County).

Lacamas Creek (tributary to Cowlitz River) (Lewis County).

Lewis River, East Fork (Clark County) from mouth to 400' downstream of Horseshoe Falls.

Little Washougal River (Clark County).

Mill Creek (Cowlitz County).

Mill Creek (tributary to Cowlitz River) (Lewis County) from mouth to hatchery road crossing culvert.

Olequa Creek (Lewis County).

Rock Creek (Skamania County).

Salmon Creek (Clark County) from mouth to 72nd Ave. Bridge.

Tilton River (Lewis County) from mouth to West Fork.

Toutle River (Cowlitz County) from mouth to forks.

Toutle River, North Fork (Cowlitz County) from mouth to posted deadline downstream from fish collection facility.

Toutle River, South Fork (Cowlitz County).

Washougal River (Clark County) from mouth to Salmon Falls.

Washougal River West (North Fork) (Clark County) from intake at WDFW hatchery upstream.

White Salmon River (Klickitat/Skamania County) from county road bridge powerhouse to 400' below Big Brother Falls.

(5) Effective June 16 until further notice:

Camas Slough (Clark County).

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 232-28-61900R Freshwater exceptions to statewide rules. (13-68)

WSR 13-10-081

EMERGENCY RULES

SUPERINTENDENT OF

PUBLIC INSTRUCTION

[Filed May 1, 2013, 10:04 a.m., effective May 1, 2013, 10:04 a.m.]

Effective Date of Rule: Immediately.

Purpose: An emergency amendment to WAC 392-101-010 is needed in order to allow child nutrition to conduct administrative hearings. This amendment is needed to clarify which child nutrition programs are actually covered under subsection (5) and which C.F.R. corresponds to these programs, as well as to add a subsection (8) and determine if any other programs need to change cases that are appealed and heard by the office of administrative hearings as well as updating any WACs referenced concerning hearings for other program areas of the office of superintendent of public instruction.

Citation of Existing Rules Affected by this Order: Amending WAC 392-101-010.

Statutory Authority for Adoption: Chapter 28A.325 RCW.

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 year 2009, 2010, 2011, 2012 or 2013, 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: More time is needed to determine if additional programs need to update the WAC in regards to appeals to be heard through the office of administrative hearings.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

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

Date Adopted: May 1, 2013.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 08-22-035, filed 10/30/08, effective 11/30/08)

WAC 392-101-010 Conduct of administrative hearings. The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to WAC 392-171-531.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 180-75-030.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program (~~and summer food service program~~) appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-005 through 392-153-040.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.